

DE  
Jure Maritimo  
ET  
NAVALI:

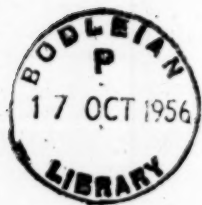
OR,  
A TREATISE  
OF  
Affaires Maritime,  
And of  
Commerce.

In Three Books.

L O N D O N,

Printed for *John Bellinger* in *Clifford's Inne Lane*  
against the West Doore of *St. Dunstan's Church*;  
And *George Daves* in *Chancery Lane* against  
*Lincolns-Inne Gate*; And *Robert Boulter* at  
the *Turk's Head* in *Cornhill*. 1676.







HE Wisdome of God is highly to be admired, who hath not endowed the other living Creatures with that Sovereigne Perfection of *Wisdome*, but hath secured and provided for them by natural Muniments from assault and peril and other necessities; But to Man, he formed him naked and frail, because of furnishing him with Wisdome, Understanding, Memory and Sence to govern his Actions, endowing him with that pious affection of desiring Society, whereby one is inclined to defend, love, cherish and afford mutual ayd to each other: Nor hath he in no less a wonderful manner (Infinitely Transcending all humane wisdom and understanding) created the material world to be subservient to his Being and Well-being: Yet, without humane Understanding and Reason did he not build a Ship, raise a Fort, make Bread or Cloth, but these came to pass onely by humane Arts and Industry, in which by the Revolutions of the Cœlestial Bodies, Times and Seasons, materials and other necessities are brought forth, by the alteration of which, men in their proper seasons reap the fruits of their Labour; so that there is no Society, † Nation, Countrey or Kingdom but stands in need of another: hence it is that men knowing each others necessities, are invited to *Traffique* and *Commerce* in the different parts and emensities of this vast World to supply each others necessities, and adorn the conveniences of humane life.

And as God hath so ordered this wonderful dependance of his Creatures on each other, so

A

hath

*Lactantius,  
lib. 9.*

† *Seneca 4.  
de Beneficijs,  
Cap. 18.*

† *Leg. ut vin*  
*D. de just. &*  
*jur. n. 7. & 8.*

hath he by a Law Immutable provided a Rule for Men in all their actions, obliging each other to the performance of that which is right not onely to Justice, † but likewise to all other Moral Virtues; the which is no more *but the dictate of right Reason founded in the Soul of Man, shewing the necessity to be in some act by its convenience and disconvenience in the rational nature in Man, and consequently that it is either forbidden or commanded by the Author of Nature, which is the Eternal Creator of all things:* And as God hath imprinted this Universal Law in the minds of all Men, so hath he given Men power (Society being admitted) to establish other Lawes which proceeds from the will, the which is drawn from the Civil power, that is, from him or them that Rule the Commonwealth or Society of Freemen united for their common benefit, (which is called the *Lawes of Nations*) and which by the will of all or many Nations, hath received force to oblige, and is \* proved by a continued use and testimony of Authentique Memorials of Learned or Skilful Men.

\* *Vasquez. 2.*  
*Controv. 54.4.*

† *Florentius*  
*3. p. tit. 22.*  
*Señ. 5.*  
*Leg. Servus.*  
*D. de Serv.*  
*export.*  
\* *Cicero offic.*  
*lib. 11. ex pa-*  
*netio.*

Now by the Lawes of Nature every Man is bound to profit another in what he can, † nor is the same onely Lawful but Commendable; so true was that saying, *Nothing is more serviceable to man then man:* \* But if Man shall neglect this immutable Law in the ayding and assisting his fellow Citizen, and enquire and dispute why God had laid this necessity upon him; And when Opportunity gives leave to take the benefit of Wind or Tyde, (in order to his furnishing himself or Neighbour with those things that adorn humane life) to dispute the Causes of their flux and reflux, and how they vary and change, He not only offends the Laws of Nature, but assumes

sumes a power of destroying Society, and consequently becomes (at the least) a wilful transgressor of the Lawes of Nations.

And though the Eternal Power hath so Established this necessity in Mankind, that every man should stand in need of another man, yet so great a Providence is over Industrious men, that scarce any man not disabled by Nature or Accident, Sicknes, Impotency and the like, but by his Industry and pains may earn more than would supply his necessities; and so much as any man gets by being truly Industrious above what supplies his necessities, is so much beneficial to himself and Family, as also an enriching to that Kingdom or State where he resides: from hence it is, that all Mankind (present or to come) are either Traders by themselves or others; and the ends designed by Trade and Commerce, are Strength, Wealth and Imployment for all sorts of people, (where the same doth most flourish) the end \* tending to the advancement, Oppulancy and greatness of such a Kingdom or State.

\* *Coke 2. Inst. fo. 28.*

*Constantinople* (the Throne once of Christendome) having been Sack't by *Mahomet* the Second, became a place of desolation as well as horror, yet he by granting a free Trade and Religion soon after repeopled that great (but unhappy) Spott. Nor did *Silemus* tread amiss in following the steps of his Victorious Predecessor, when having the like success on *Tauris* and *Grand Cairo*, he translated the *Persian* and *Egyptian* Artificers and Traders to that repeopled City, following the Example of the *Roman* Virtues. Nor did our Victorious Third *Edward* deem it an Act unbecoming his great Wisdom, when he brought in the *Walloons*, whose Industry soon Established the Woollen Manufacture,

Anno 1453.  
*Vide Knowls History of that Monarchy.*

*Mirror, cap. 9. Sect. 2. 11 Ed. 3. cap. 3.*



† *V. de Camb-*  
*den's Q. Eliza-*  
*beth.*

he not deigning to give no less a security for the enjoying their then granted Immunities and Priviledges, then his own Royal Person. Nor did that politick Princess † shut her Ears from embracing the Offer of those distressed *Burgundians* (after the Example of her Great and Royal Predecessor) who sought refuge in her Dominions from the ridged severity of the long Bearded *Alva*, who planting themselves by her appointment at *Normich, Colchester, Canterbury*, and other Towns, have of those places (then only habitations for Beggars) raised them now in competition with (if not excelling) all, or most of the Cities in *England*, for Riches, Plenty and Trade. Nor need we run into the History of earlier Times to give an account of the many Kingdomes and States that have risen by Industry and Commerce; 'tis enough if we cast our Eyes on our Neighbour the *Hollander*, a place by relation of *Ortelius*, not much bigger then *Yorkshire*, and such a Spott, as if God had reserved it as a place onely to digg Turf out of, for the accommodating those Countries wherein he hoards up the miseries of Winter, it affording Naturally not any one Commodity of use, yet by Commerce and Trade (the Daughters of Industry) it is now become the Store-House of all those Merchandizes that may be Collected from the rising to the setting of the Sun, and gives those People a name as Large and High as the greatest Monarch this day on Earth: Nor need we pass out of Christendome to find Examples of the like, when *Venice, Genoa, Lubeck, Embden*, and the rest of the *Hanfiatique Towns* (once the Marts of the World, till Sloth, Luxury and Ambition got within their Walls, and drove it to Ports of Industry) that have since kist and embrac't it, the which this  
Isle

Isle by the Influence of his Royal Majestie hath been no small sharer in.

Hence it is that Trade and Commerce are now become the onely Object and Care of all Princes and Potentates, its Dominion not being acquired by the rufull face of Warr, whose footsteps leave behind them the deep impreffion of misery, devaftation and poverty, they knowing the return of Commerce is Riches and Plenty of all things conducing to the benefit of humane life, and fortifying their Countries with Reputation and Strength.

It was Trade that gave occasion to the bringing of those mighty Fleets to Sea, as if God had left it to them to decide by force (wherein no Age or Time can witness the like) the Empire of the World: Hence it was (the advantages being found which arise by Commerce) that *Navigation* got its birth into the World, reducing the several Nations on the Earth by that means to be even as one Common Family; and when in this Isle we were even in the state of Canibals, it brought in a People that instructed us in Arts, Policies and Manners, and taught us actions no less virtuous then those themselves followed; And although long and difficult it was before that Mighty People could be brought over to have thoughts of the advantages arising from *Commerce* and *Navigation* (they onely propounding to themselves Blood, Slaughter, Conquest, the Riches and Spoils of Nations); but when they entred into the *Carthagenian* Warr, a quarrel with a People not worth the opposition of a Tribune (as they thought) but finding that neither *Tribune* nor *Pretors*, no nor the Flower of the *Roman* Army was able to withstand them, or to prevent the Invasion of their Country, and

Anno { 1666.  
1672.  
1673.

Camden.

*Quæstus Omnis  
indecorus patri-  
bus, sayes Livy,  
Lib. 1. Dec. 3.*

Though they  
had 100 Ro-  
strated Ships,  
and 75 Gallies  
under Caius  
Drillus and his  
Colleague, as  
Polybius ob-  
serves.

then in the very bowels of the same, put it to the Question, *Rome* or *Carthage* Mistrels of the World, they began to consider whence and from what caules those unknown *Affricans* should withstand the *Conscript Fathers* and power of *Rome*, and should dare to dispute with those that had lead so many Captivated Kings in Triumph, and brought so many Haughty Nations to Truckle under their Victorious Eagles, at last they found it was *Commerce* and *Navigation* that gave power and force to that Mighty People, Then it was that *Rome* began to know that *Rome could not be Rome without a Naval force*; the which, and to redeem their bleeding Honor they soon hastened and equipt, great as their Competitors, and afterwards *Argentum* being won, *Carthage* became no more impregnable; after which with Peace they plowed the Neighbouring Streights to *Tinges*, *Gades* and the *Herculean Streights*, nor could any thing be too difficult afterwards, till they arrived on the *British* shore, where beholding her ample Bayes, Harbours, Rivers, Shoares and Stations (the Jewels and Ornaments of that Spott, and having made a Conquest of the same) they soon cultivated into our rude Natures the spirit of *Commerce*, teaching & instructing us in those polite ways that fortifie a Kingdom by Naval force, as the *Standard and undeniable marks of Empire*, and by ayding and teaching us in the driving on a continued and peaceable Tract of *Commerce*, we have fathomed the unknown depth of the *Indian* Shoares, uniting as it were extreams, made the Poles to kiss each other, teaching us thereby, that it was not the vast Emensities of Earth that Created Empire, but scituation accompanied with *Industry*, *Commerce* and *Navigation* that would

would enable a People to give Lawes to the World: In the pursuit of whose Virtues this Nation hath not been wanting, and of following their great Directions in the enlarging our Fleets; for they, when they advanced their Eagles on the *British* Shoare found us not then without Ships of Force, time having not been so envious to this Island, as to eat out those Records wherein mention is made † that the *Bri-* <sup>† camden</sup> *tains* accompanied the *Cymbrians* and *Gaules* in <sup>Strabo lib 3.</sup> their Memorable Expedition to *Greece*, long before the Incarnation of the Worlds Saviour; and it was from that Center that the Mighty *Cesar* first drew his Line, and took thoughts of plowing the Ocean to find out that Warlike People to face his victorious Legions, when, having Landed, and finding a place adorned by Nature beyond any thing that could be called great, taught us to maintain that superiority of Dominion, that no Neighbouring Nation should frequent our peaceable Shoares, and those Merchants that came, assigned them places to drive their Commerce and Traffique, jealous that any Neighbouring Rival should kiss his beloved *Brittannia* but a *Roman*, and for whom he fetch't so long and tedious a march; Thus in our Infancy teaching us both Defence and Commerce. And when that mighty Empire began to decline, and those remaining *Romans* began to moulder and mix among the Natives, and to become as one People again, then Sloth, Luxury and Idleness (the fore-runners of ruine) invaded our Shoars by a fatal stupidity, it suffered our floating Castles, (Bulwarks of the Kingdom) to rott in their pickled Brine, and our Ports to be surveyed by forraign people; which supine negligence soon subjected us a prey to our ambitious Neighbors,

*Gaules Town*  
near *Tarmouth*  
the Mart for  
those Neigh-  
bouring Mer-  
chants.



*Abrahamus  
Whelochus de  
priscis Anglo-  
rum legibus;  
written origi-  
nally by Mr.  
Lambard.*

\* Inserted in  
*Leges Edwardi*,  
and afterwards  
confirmed by  
the Norman  
Conqueror.

Mr. Selden's  
*Mare Clausum*,  
lib. 2. Cap. the  
10th to the 16.

*Matthew Westm.*  
Anno 1035.  
fo. 409.  
*Selden Mare  
Clausum*, lib. 2.  
Cap. II.

who no sooner finished their Conquest and sheath'd their devouring Swords, but each (as if inspired by the very genius of the place) Equipt out Fleets great as their Commander, to secure what they had so dearly won, of whom Story makes mention of the mighty *Arthur*, no less famous in his Warlike Atchievements, then in leading his Squadrons as far as *Iceland*, bringing those *Northern* People to pay obeysance to his victorious Standard, and acknowledge him as their Supream Lord even from the *British* to the *Russian* Tracts, and by him left to the famous *Edgar*, \* who no sooner found his undoubted Right, but resolved to vindicate that Dominion which his Royal Predecessor had with so much glory acquired, and with so great care had communicated and remitted down to his Successors: No less a number then four hundred Sayl of Ships did that mighty Prince at once cover the Neighbouring Ocean, making them the *Port-cullis* of this Isle and the adjacent Seas, by which he vindicated his Dominions on the Waters, and gave Lawes in the Chambers of his Empire: Nor did his Successors *Canutus*, (whom Record makes mention that having laid that ancient Tribute called *Danegeld*, for the guarding of the Seas and Sovereignty of them, was emblematically exprest sitting on the shoar in his Royal Chair while the Sea was flowing, speaking, *Cum ex ditioris es & terra in qua sedeo est &c.*) *Egbert*, *Althred*, *Ethelfred*, forget the assertion of their great Predecessors Dominion and Sovereignty of the same under no lower a stile then *Supream Lords or Governours of the Ocean*, surrounding the *Brittish Shoare*, never so much as contested by any Nation whatsoever, unless by those that attempted

tempted the Conquest of the entire Empire, in  
 which that became subject to Fate as well as  
 the other of the Land: Nor did the succeeding  
 Princes also of the *Norman* Race start or  
 waive that mighty advantage in their suc-  
 cessive Claims, and maintaining their Right  
 to the adjacent Sea; as appeared not long after  
 by that Famous Accord made between *Edward*  
 the First, and the *French King Philip the Fair*,  
 calling \* him to an account for Pyracies com-  
 mitted within the *Brittish Seas*, the Submission <sup>\* *Coke 4. Inst.*  
 of the *Flemmings* in open Parliament in the *so. 142.*  
 Second *Edwards* Reign; and the Honour or  
 Duty of the Flag which the Politique King  
*John* had above Four hundred years since  
 challenged by that Memorable Ordinance at  
*Hasting* † there decreed to take place univer-  
 sally, not barely as a Civility, but as a Right, <sup>† *Inter Leges*  
 to be paid *cum debita reverentia*, and per- *Marinas sub*  
 sons refusing to be assaulted and taken as *sine anno Regni*  
 Enemies; the same not onely to be paid to *Regis Johan-*  
 whole Fleets bearing the Royal Standard, but *nis 2.*  
 to those Ships of Priviledge that wear the Prin-  
 ces Ensigns or Colours of Service: Nor was  
 this barely a Decree written, but nobly assert-  
 ed by a *Fleet* of no less than 500 Sayl in a Voy-  
 age Royal of his, wherein he sail'd for *Ireland*,  
 in his way commanding all Vessels which he  
 met in the Eight circumfluent Seas to pay that  
 Duty and Acknowledgment. Nor was the  
 Third *Edward* slow in following the steps of  
 his wife Predecessors, when he Equipp'd out a  
*Fleet* of no less than 700, (though on another  
 occasion) with 200 of which he vanquished  
 a *Fleet* of twice the number before *Calais*, to  
 the loss of 30000 *French*. Nor did our victo-  
 rious Conquerour of the Sepulchre the Great  
*Richard*</sup></sup>

\* *Cic. ad Artic.*  
l. 10, Ep. 7.

*Richard* the Second, who in his return from the *Holy Land* want a Navy Royal to attend him home, by the force of which he took and destroyed near 100 more Ships of the *French*. And look we but into the mighty Actions of the succeeding Princes, we shall find all that ever designed Empire but were Zealous in the encouragement of Navigation, looking on that Axiom as undeniable, \* *Qui Mare tenet cum necesse esse rerum potiri*, and that without which, the *British* Sovereignty is but an empty Title.

Born in *England*, but resident at *Genoa*.

Nor ought alone the Praises of those great Monarchs, whose mighty care had always been to preserve the Reputation of their Empire in their Maritime preparations, to be remembred; but also those of our Inhabitants, who always have been as Industrious to follow the encouragement of those Princes under whom they flourish't, and who with no less Glory and timely application in Traffique, did constantly follow the examples of those of *Genoa*, *Portugal*, *Spaniards*, *Castilians*, and *Venetians*, whose Fame in matters of Commerce ought to be inrolled in letters of Gold, since the Ages to come, as well as present, having been doubly obliged to their memory, the third of which making use of a discontented Native of this Isle, the Famous *Columbus* who prompted by that Genius that naturally follows a Native wise man, discovered a New World, in whose Expedition he fathomed unknown Paths, and detected the *Antillus*, *Cuba* and *Jumaca*, &c. and the *Terra Firma* of the *American* Shoare, who taking his Conjectures from the spireing of certain Winds from the *Western* Points, by strong impulse accompanied with that Philosophy he attained

rained to; concluded some Continent must  
 needs be hid in those unknown Parts; his Ser-  
 vice being first offered to his Prince and refu-  
 sed, he was soon after entertained, purely on  
 the faith of that Noble Princess *Isabella of Spain*,  
 who for 17000 Crowns (for which she en-  
 gaged her *Jewels*) she received not long after as  
 many Tuns of Treasure, and to her Husband's  
 own use, in Eight or Nine years time came  
 above Fifteen hundred Thousand of Silver, and  
 Three hundred and sixty Tuns of Gold: Thus  
 Ingenuity encouraged though in one single  
 Person, hath occasioned Wonders, and from a  
 small Kingdom, (as *Spain*) it hath since raised  
 its head in a condition of bringing all those  
 many Kingdomes and Vast Emenities of  
 Earth which they possess under their protecti-  
 on, putting them once on thoughts of no less  
 than an **Universal Monarchy**: We need onely  
 mention *Sebastian Chabott* a Native of *Bristol*,  
 who discovered *Florida* and the Shoares of  
*Virginia*, dedicated to that Virgin Princess *Eli-  
 zabeth*; *Thorn, Elliott, Owen, Gwyned, Hawkins,*  
*Cavendish, Furbisher, Davis, Stadson, Raleigh,* and  
 the Incomparable *Drake*, who was the first  
 (agreed Universally) of any Mortal to whom  
 God vouchsafed the stupendious Atchievement  
 of Incompassing not this New World alone,  
 but New and Old together, twice embraced by  
 this Mighty Man, who first making up to *Nom-  
 bre de Dias*, got sight (with Tears of Joy) of the  
*Southern Seas*, the which in five years after he  
 accomplished it, passing through the *Magellan*  
*Streights* towards the other *Indies*, and doubling  
 the famous Promontory, he circum-navigated  
 the whole Earth.

*Campanella*  
*Histor. Hispan.*

Nor



Tempore Elix.  
Regina Angl.

Nor ought that truly worthy Captain Sir *John Norborough* be precluded from having place after the mighty *Drake*, he having not long since passed and repassed the *Magellan Streights*, by which that Worthy Person hath performed that Atchievement which was never yet done by any Mortal before. To reckon up the particular Actions of *John Oxenham* (a sharer in that mighty performance of *Drake*,) of his drawing his Vessel up to Land and covering the same with boughs, passed the unknown paths of Land from *Nombre de Dios*, to the *South Sea*, and there building a Pinnacle enters the Isle of *Pearles*, and from the *Spaniards* takes a Treasure almost beyond credit; of the indefatigable diligence of *Willoughby*, *Burroughs*, *Chanceler*, *Button*, *Buffin*, *Furbisher*, *James Middleton*, *Gilbert Cumberland*, who plowed up the *North-East* and *North-West Cathaian* and *China* passage; of *Jones* and *Smith*, whose Fortune and Courage was great in those Parts; of *Poole*, who found out the Whale Fishing; of Captain *Bennett* the first discoverer of *Cherry Island*; *Gillian* and of *Pett*, and *Jackman* that passed the *Vaigates*, *Scythian Ices*, and the River of *Ob*, as far as *Nova Zembla*; nor of the Famous *Davies*, who had penetrated to 86 degrees of latitude, and almost set his foot on the *Northern Pole*: Men whose Actions in the atchieving of discoveries, and pointing out to places for an immense improvement in Navigation and Commerce, ought to be inrolled in the Temple of Fame as Monuments to succeeding Ages, of their Mighty and Laborious Travails and Industry. The Consideration of all which gave some sparks of encouragement to the writing the

the ensuing Tract, especially when reflecting that among all Nations there is a Common Law which governs the mighty thing of Navigation and Commerce, I had some impulses more then ordinary to induce me to the same, especially at a time when Navigation and Commerce were never (from the erection by Divine instinct that Mighty Proto-Type the Ark, to this present Age,) in greater esteem then now, and by which we have found vast and great easements and discharges from those Royal and Just Rights and Dues which ever were, and of Old justly due to those that Govern'd this Empire; Therefore ought by all wayes and means to be fortified and encouraged, be it by whatsoever Art, Science or thing that does in the least point out towards the same. Nor was it then wanting in thoughts to promote and incite the Professors of the Law, raising and stirring up their Genius to the advancement of the Law in this point; and though I believe many have wish't that such a thing might be, yet none that I can find have ever yet attempted the same: nor is it possible, unless those things which are by Law *constituted and known*, be rightly separated from those that are *natural*; for natural Law is immutable and alwayes the same, therefore may easily be collected into Art. But things that come from Constitution, because they often vary and change, and are divers in divers places, are put without art, as other precepts of Laws positive or municipal; hence it was that the Constitutions and Laws of *Rhodes* for their Justice and Equity got footing amongst the *Romans* as well as amongst other the bordering

Manil. pro Ora-  
tat Legi.

dering People on the Mediterranean, *Rhodia-  
rum usq; rerum memoriam disciplina Navalis et  
gloria remansit*; yet when they as well as the  
*Romans* became subject to fate, they then re-  
mained onely as Examples of Justice and Rea-

And Mr. Serjeant *Calis* must  
be so understood of the an-  
cient Civil and Modern *Ro-  
man* Law reduced into one,  
and they are not now two  
Lawes, one Civil, and the  
other Imperial, but onely  
one, that is, the Imperial.  
*Vide* his Reading on the  
Statute of Sewers, Sect. 1.  
fo. 31.

The Articles of Enquiry an-  
nexed to them in 12 Ed. 3.  
The Inquisition at *Quinbo-  
rough*, 49 E. 3. Anno 1375.  
Statutes of Enquiry transla-  
ted by *Roughton*.

son for others to imitate and fol-  
low: An obsequious Adorer of  
which was the great *Justinian*, who  
caused them to be inserted into the  
Civil Law; and though they ob-  
tained a place amongst others of the  
Ancient *Romans* as well as the Mo-  
dern, yet have they not all received  
by custome a force as may make  
them Laws, but remain onely as  
they have the Authority in shew of reason,  
which binds not always alike, but varies ac-  
cording to circumstance of time, place, state,  
age, and what other conveniences  
or inconvenience meets with it;  
nor have those Laws instituted at  
*Oleron* obtained any other or grea-  
ter force then those of *Rhodes* or  
Imperial, considered onely from the  
reason the which are not become Lawes by any  
particular Custome or Constitution, but onely  
esteemed and valued by the reasons found in  
them and applied to the case emergent.

'Tis true, That in *Rome* and some other parts  
of *Italy* and *Germany*, and the Kingdom of *Por-  
tugal*, in all those cases wherein the municipal  
Ordinances of those Countries have failed in  
providing, the Imperial Laws (if the case be such  
as that it *non Tragna peccado*, or be not spiritual,)  
is there made of force; but there is no other  
Nation, State or Republique can be named  
where

where any part of the body of those Imperial Lawes hath obtained the just force of a Law, otherwise then as Custome hath particularly induced it; and where no such settled Custome hath made it a Law, there it hath force onely according to the strength of reason and circumstance joyned with it, or as it shews the Opinion and Judgment of them that made it, but not at all as if it had any commanding power of obedience, that is *valet pro ratione non pro inducto jure pro ratione quantum Reges Dynasta et Republica intra potestatis suae fines valere patiuntur*; And for Spain it is observed, *Hispani Duplex habent Jus solum Canonicum scilicet et Regium Civile enim* (meaning the Imperial Lawes) *non habet vim Leges sed rationes*. And since this Kingdom as well as most others being free from all subjection to the Empire, having constituted or known Laws of their own, exclude all Imperial power and Law, otherwise then as Custome hath variously made some admission, I applyed my self to the Collection of such matters, according to my inconsiderable Judgment, as are either constituted by the Supream Authority of the Three Estates, or that which hath in some measure obtained by continued Custome the force of Law in reference to matters Maritime and of Commerce as well in cases publique as private.

By the first part of which I thought it necessary, since Nature by Traffique hath made us all Kinsmen, to consider and examine upon what Grounds and in what manner Commerce was first procured and established, which is by the Lawes of Leagues, Embassies and the like, which is a thing fit to be known; so likewise of what may interrupt the same, and likewise  
of

Selden tit. of  
Honour, lib.  
ult. cap. ult.



of those perpetual Rights that are between those that have any reference to Sea-faring causes in matters Civil.

In the prosecution of this Work, I have taken care to refer those things which pertain to the *Laws of Nature* unto Notions so certain, that no man without offering of violence to himself may deny them; and to ascertain the truth of such, I have used the Testimonies of such authority (as in my weak Judgment are of Credit to evince the same) and as to that Law which we call the Law of Will or Common consent or the Law of Nations, for that which cannot by sure consequence be deduced out of sure principals, and yet appears every where observed, must needs have its rise from free will and consent, which is that which is called the *Law of Nations*; both which (as much as possible) hath been endeavoured to be kept asunder where the matter hath required it. And for the Civil Law, I have ascertained the several Authorities which I have made use of, that is of the *Romans*, into three sorts, the *Pandects*, the *Code of Theodosius* and *Justinian*, the *Novel Constitutions*, and these most excellent *Juris consults* that have by their profoundness of Judgment illustrated the obscure paths of the same Law; the third those most excellent persons who joyned Policy to Law, as *Grotius*, *Raleigh*, *Selden*, and the like. Of other Pieces that of *Shardius*, entituled *Leges Navales Rhodiorum et selecta Rhodiorum*, *Petrus Pekius* the *Zealander*, *Lotinius*, *Vinius*, that of *Oleron* Collected by *Garasias* alias *Ferrand*, and *Cleriaek*.

As to those matters that have passed the Pikes at the *Common Law*, I have as carefully as possible referred to their several Authorities.

ties. In the whole Work I have no where meddled with the *Admiralty* or its Jurisdiction, knowing well that it would have been impertinent and sawcy in me to enter into the debate of *Imperium merum*, *Imperium mixtum* *Jurisdiction simplex*, and the like, and of the bounding out of Jurisdictions, which in effect tends to question the Government, and tripp up the Power that gives Lawes and Protection to us, since all that can be said as well on the one side as the other, hath been so fully and Learnedly handled and Treated of by several Worthy Persons, (that have indeed said all that can be said) but more especially in that Famous Dispute not long since before His Sacred Majesty in Council, where all the most Elaborate and Ingenious Reasons that could be drawn by the Skill of a Learned Civilian, were there asserted in vindicating the Admiralties Jurisdiction, by the Judge of the same, Sir *Lionel Jenkins*, in answer of whom was produced that *Great Good Man* the Lord Chief Justice *Hale*, who as well by Law positive as other his great Reasons, soon put a period to that Question, and layd that asleep which during his dayes it may modestly be presumed will hardly (if ever) be awakened.

He that hath never so little to do with the Compass though he sits still in his place, does as much or more than all the other necessary noise in the Ship; the comparison is quit of Arrogance, for it holdeth in the design, it is not meant of the performance.

And though I well know, That those that spend their time in brewing of Books are by

[ a ]

It is called *Imperium*, because it proceeds from the authority of the Judge, and not from any right inherent in the party.  
*Legi 1. §. de Const. Princ. p. 2*  
*Coke lib. 10. fo. 73. 18. 19*  
*case del Marshalsea*

*Seneca*

*Seneca* compared to petty Painters, that busie  
themselves in Copying out Originals, having  
this half Verse of *Horace* often thrown in their  
Teeth,

— *O imitatores, Servum pecus!*

Yet I have this hope left, That my faults  
and flaws like those found in the Cutts of  
Diamonds, may at this time the easilier escape  
under the excellency of their Subject, or at  
least under that of your Charity.

---

The

---

# The Contents of the First Book.

Chap.	Fol.
1. <b>O</b> F Dominion and Property in general, and of the causes changing the same by Ships of Warr.	1
2. Of Letters of Marque and Reprizal.	14
3. Of Privateers or Capers.	25
4. Of Piracy.	33
5. The Right of the Flagg as to acknowledging the Dominion of the British Seas.	46
6. Of the Right of Pressing or Seizing of Ships or Marriners for Service publique.	62
7. Of Dominion Establisht by Treaties of Alliance Equal.	70
8. Of Alliances unequal, and of Protection.	83
9. Of Treaties of Truce and Neutrality.	89
10. Of the Immunities and Priviledges of Ambassadors and other Publique Ministers of State.	93
11. Of the Right of delivering of Persons fled for Protection,	107
12. Of Contribution paid by Places Neuter, to both Armies in Warr.	114
13. Of the Naval Military part.	121
14. Of Salutation by Ships publique and private.	147

## The Contents of the Second Book.

1. <b>O</b> F the various Rights and Obligations of Owners and Partners of Ships in cases private.	191
2. Masters of Ships their Actions considered in reference to cases private and publique.	196
3. Of Marriners their several Offices and Immunities, and of Barratry committed by them.	207
4. Of Freight, Charter-parties and Demorage.	217
5. Of Wreck.	226
6. Of	



## The Contents.

Chap.	Fol.
6. <i>Of Averidges and Contributions.</i>	232
7. <i>Of Policies of Assurance.</i>	239
8. <i>Of Prisage and Butlerage.</i>	250
9. <i>Of Pylots, Wharfage, Primage, Averidge, and Loadmanage.</i>	254
10. <i>Of Bills of Exchange.</i> —	258
11. <i>Of Moneys advanced by way of Bottomery, or Fœnus Nauticum.</i>	276
12. <i>Of Impositions called Great Customes, Petty Customes, and Subsidies.</i>	288
13. <i>Of Impositions subsequent Conditional temporary, &amp;c.</i>	313
14. <i>Of Scavage, Package, Porterage, Ports, Members, Creeks, the Port of London, and places lawful to lade and unlade-</i>	319
15. <i>Provisions and Allowances made notwithstanding the several Clauses in the Acts for the Customes.</i>	332
16. <i>Of the Right of Passage, of Imposing on the Persons and Strangers for Passage thorow the Seas.</i>	344


## The Contents of the Third Book.

1. <span style="font-size: 2em; float: left; line-height: 0.8em; padding-top: 0.1em; padding-right: 0.1em; padding-left: 0.1em;">O</span> <i>F Freedome, Bondage, Slavery, Exile and Abjuration.</i>	385
2. <i>Of Aliens as in reference to their Estates Real and Personal.</i>	395
3. <i>Of Naturalization and Denization.</i>	405
4. <i>Of Aliens and Tryal per medietatem, where allowed, and where not.</i>	414
5. <i>Of Planters.</i>	421
6. <i>Of Merchants.</i>	429
7. <i>Of Factors.</i>	439
8. <i>Of the Lawes of Nature, and of Nations.</i>	448

# CHAP. I.

## Of Dominion and Property in generall, and of the causes changing the same by Ships of War.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of Dominion in the primitive state of Man.</p> <p>II. That such a Dominion universal might have continued.</p> <p>III. Of the causes or change of the same into Dominion peculiar, or Property.</p> <p>IV. Of things excepted tacitly by the Law of Dominion.</p> <p>V. Of Property where the same may be changed against the owner.</p> <p>VI. Of War, when accounted by the Laws of England.</p> <p>VII. Of Foreign war, and of things justly acquired therein, whether Ships or Merchandize.</p> <p>VIII. Of Restitution, where the same by Law may be made of Ships or Merchandize acquired in War.</p> <p>IX. Of Restitution <i>ex gratia</i>, made by the Souveraign, of him whose Ships are lost, and regain'd after-</p> | <p>wards in Battle by Ships of War; and of the like by Princes or Republicques in amity.</p> <p>X. Of the Assaulting an Enemy in the Ports or Havens of a Nation Neuter, whether lawful by the Laws of Nations.</p> <p>XI. Of Protection given to the Ships of the Enemies being in Port before, &amp; remaining after War denonn'd.</p> <p>XII. Of the Goods of Friends found in the Ships of Enemies, and of those of Enemies found aboard the Ships of Friends.</p> <p>XIII. Of the destroying of the Ships of Enemies in general.</p> <p>XIV. Of interpellation and denunciation, whether necessary.</p> <p>XV. Of the Goods of Friends that supplyeth an Enemy, whether capable of being made prize.</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I.  O sooner had the Eternal Power created Man, but he bestowed on him a right over the things of this inferior Nature; nor was his goodness lessened upon the reparation of the World, after the Flood, (*all things being then undivided and common to all, as if all had one Patrimony*) since *Justin. lib. 43.*

every Man might then take to his use what he pleased, and make consumption of what he thought good in his own eyes; which use of the universal right was then instead of Property, for what any one had so taken, another could not without injury take away from him.

II. Nor was it impossible for that state to have continued, if Men through *great simplicity*, or *mutual charity* had *lived*

A Theater is common, yet the place possessed by any one, may be rightly called his own.

## Of Ships of War.

[ *Justin. lib. 2.  
ut de Scythia  
loquitur Tro-  
gus.*

*Primum inter  
Homines mali  
nescia, & ad-  
huc astutia in-  
experta simpli-  
citas.*

*Seneca Natu-  
ralium 3. in  
fine.*

*Ne insignare  
quidem aut  
partire limite  
camp. fas erat.*

lived together, and this is instant in those *Americans*, who through many Ages have lived in that community and custom, and the other of *Charity*, which the *Essens* of old practised, and then the *Christians*, who were first at *Hiernsalem*, and at this day not a few that lead an asstetick life; the simplicity of our first Parents was demonstrated by their nakedness, there being in them rather an *ignorance of vice, then a knowledge of Virtue*, their only business being the Worship of God, living easily on those things, which the Earth of her own accord brought forth without labour.

III. Yet in this simple and innocent way of life, all Men persisted not, but some apply'd their minds to various *Arts*; the most antient of which was *Agriculture and Pasture*, appearing in the first *Brothers*, not without some distribution of Estates, and then from the diversity of each Man's actions, arose *Emulation*, and then *slaughter*; and at length, when the Good were infected with the bad, a *Gigantick kind of life*, that is *violent*; but the World being washed by the *Flood*, instead of that fierce life, succeeded the desire of *Pleasure*, whereunto *Wine* was subservient; and thence arose *unlawful Loves*, but by that more generous *vice Ambition*, Concord was chiefly broken, after which Men parted asunder, and severally possess'd several parts of the Earth; yet afterwards, there remain'd amongst Neighbors a communion not of Cattle, but of Pastures, because in the small number of Men, so great was the latitude of Land, that without any incommmodity it might suffice to the uses of many, untill the number of Men, so of Cattle increased, Lands every where began to be divided, not among Nations as before, but among Families; an instance of which we have hourly before our eyes in those vast immensities that are daily appropriating and a planting in *America*, from hence we learn what was the cause for which Men departed from the Primitive communion of things, first of *movables*, and then of *immovables* also; to wit, because when not content to feed upon that which of it self, and the Earth singly brought forth, to dwell in *Caves*, to go *naked*, or clad with rinds of trees, or skins of Beasts; they had chosen a more exquisite kind of life, there was need of Industry, and using of Art in those matters, which they should give themselves up to; so likewise from hence we learn, that Men not content to live in that

that innocent state of community, how things went into Property, not only by the act of the mind (for they could not know the thoughts of one another, what every one would have to be his own, that they might abstain from it, and many might desire the same thing) but by a certain *Covenant*, either *express* as by division, or *tacit* as by occupation; for so soon as Communion did not please them, and division was not made, it ought to be supposed an agreement amongst all, that every one should have proper to him self what he seized on, †for every one might prefer himself before another, in getting those things useful for the accommodating of Humane life, Nature not being repugnant to the same.

Grotius de  
Mori libero  
cap 15.

† Cic. Offic. 2.  
Addendum il-  
lud Quintilia-  
ni; Si hoc con-  
ditio est, ut  
quicquid in us-  
um hominis  
cessit, proprium  
sit habentis,  
profecto quic-  
quid jure possi-  
detur, injuria  
aufertur. Mac-  
robii Saturni,  
lib. 3. c. 12.

I V. And though Property may seem to have swallow'd up all that right which arose from the common State of things, yet that is not so; for in the Law of Dominion, *extrem* necessity seems excepted. Hence it is that in Navigation, if at any time Victuals fail, what every one hath, ought to be brought forth for the common use: and so in a Fire, I may pull down or blow up my Neighbors House, to save mine; destroy the Suburbs, to raise Lines or Forts, to preserve the City thereby; dig in any Mans Grounds for Salt-Peter, cut in pieces the Tackling or Nets upon which my Ship is driven, if it cannot be disentangled by other means, all which are not introduced neither by the Civil Law, nor the Municipal Laws of Countrys, but are expounded by them, with their proper diversities.

Leg. 2. §. cum  
in eadem D. ad  
Leg. Rhodani.  
Quo non fragm.  
§. Quod ait.  
D. incend. Leg.  
Quemadmodum  
§. item. D. ad  
l. Aquilam.

12. Ed. 3. tit. distress. 170. 11. H. 7. 5. Reniger & Fogastas, Plowden c. 1. to the 10. Coke 3 Inst. fol. 83.

V. Nor is Property so far instated in Man, but the same may again be devest'd by such means as stand with the Law of Nature and Nations; and first by War, the causes of which are assign'd to be three, *Defence*, *Recovery* and *Revenge*,

Bald, lib. 3. de  
rerum diversio-  
rum, seems to  
have been of  
opinion, that  
by the Laws of

Nations one may take Armes to abate the growing power of his Neighbors. Sed ut vim pati posse ad vim inferendam jus tribuat ab omni equitatis ratione abhorret: But that a possibility of suffering force, should give a right of offering of force, this is far from all equity, says the excellent Grotius lib. 2. cap. 1. (sect. 27). Sir Walter Raleigh in Hist. of the Word cap. of Duels fo. 550.

But then such War must be just, and he that undertakes it must be a *Sovereign*; the just causes to make a War are our *Princes*, or *Countreys* defence, and that of our *Allies*, the satisfaction of our injuries, or theirs; our just pretensions



## Of Ships of War.

tions to an Estate or Right; Divines have added another, not only the defence of Religion, but its advancement and propagation, by the way of Arms, and some the extirpation and rooting up a contrary. Certainly War is too rough a hand, too bad a means, to plant Piety; *Sicut non Martyrem pœna, sic nec fortem pugna, sed causa;* As it is not the punishment that makes the Martyr, so it is not fighting that declares a valiant Man, but fighting in a just cause, in which who so shall resolutely end his Life valiantly, in respect of the cause, that is, in the defence of his Prince, Religion or Country, ought to be numbred amongst the Martyrs of God.

24 E. 3. tit.  
Scire facias  
122. inter Mor-  
timer and Th.  
Earl of Lan-  
caster.

VI. War by the Laws of England, is accounted when the Courts of Justice are shut up, and the Judges and Ministers of the same cannot by Law protect Men from violence, nor distribute Justice: So when by Invasion, Insurrection, Rebellions, or such like, the current of Justice is stopt and shut up; *Et silent Leges inter arma;* then it is said to be time of War, and the Tryall of this is by Records and Judges of the Courts of Justice, and not by a Jury: the Kings Standard appearing in the Feild, or at Sea, does likewise denote a War, and if the Rebels against whom the Kings Host marches, breaks a Prison, the Goaler is not lyable, for they are not such Rebels as are capable of being suppressd by the ordinary Ministers of Justice; but the subject matter is now only touching forraign War, or that which is commenced for Dominion or Right, or for the maintaining of the same in our peaceable possession, according to Justice.

VII. By the Law of Nature in such a War, those things are acquired to us, which are either equall to that, which being due unto us, we cannot otherwise obtain, or else is such a mark as does infer damage to the guilty part, by a fit measure of punishment. And by the Laws of Nations not only he that wargeth War on a just cause, but every one in solemn War, and without end and measure is master of all he taketh from the Enemy in that sense, that by all Nations, both himself and they that have title from him, are to be maintained in the possession of such things; which as to external effect we may call Dominion: *Xenoph. 4. de Cyrus in Xenophon, it is an everlasting Law among Men, that the Enemies City being taken, their Goods and Money should be the conquerors;* for the Law in that matter is as a common agreement,

agreement, whereby the things taken in War become the Takers: from the Enemy are judged to be taken away, those things also which are taken away from the subjects of the Enemy, and Goods so taken cannot by the Law of Nations be properly said taken, but when the same are out of all probable hopes of recovery, that is as Pomponius observes, brought within the bounds or guards of the Enemy; for, says he, such is a Person taken in War, whom the Enemies have taken out of our, and brought within their guards, for till then he remains a Citizen: and as the Law of Nations is the same reason of a Man, so likewise of a thing; and therefore Goods and Merchandize are properly said to be the Captors, when they are carried *infra Præsidia* of that Prince or State, by whose Subject the same were taken, or into the Fleet, or into a Haven, or some other place where the Navy of the Enemy rides: for then it is that the recovery seems to be past all hope.

Aristotle 1. Polit.

Huius modi res non tam capta quam recepta intelligitur, per D. per Pomponius & L. Leg. in Bello Parag. Si quis servum in pr. de Capt. & post.

And with these Laws agrees the Common Law of this Realm, which calls such a taking a *Legalis Captio in Jure Belli*, and therefore in 7. R. 2. an action of Trespass was brought for a Ship, and certain Merchandize taken away, the Defendant pleaded that he did take them in *le haut Merre ou les Normans queux sont Enemies le Roy*: and it was adjudged, that the same Plea was good.

2. R. 3. f. 2.

7. R. 2. Trespass Statbar Pl. 54.

In the year 1610, a Merchant had a Ship and Merchandize taken by a *Spaniard*, being an Enemy; a month after a Merchant Man, with a Ship called *The Little Richard*, retakes her from the *Spaniard*: it was adjudged, that such a possession of the Enemy, divested the Owner of his interest, and the retaking afterwards in *Battel*, gained the Captors a property.

M. B. Jac. in B. R. Brownlow 2. part. & Westons C.

'Tis true, the Civilians do hold, that it is not every possession that qualifies such a Caption, and makes it become the Captors; but a firm possession (that is) when the prize doth *pernoctare* with the Enemy, or remain in his possession, by the space of 24 hours; but as this is a new \* Law, so it is conceiv'd to be against the antient as well as the modern practice of the Common Law: for the Party in the antient Presidents doth not mention by their Plea, that the prize did *pernoctare* with the Enemy, and but general, that the same was gain'd by Battle of the Enemy.

\* Consularis Maris c. 283, 287. Constit. Gallice lib. 20, tit. 13. art. 24, 7. R. 2. Trespass Statbar Pl. 54.

But, if such a Recaption is by one of the King of Eng-

lands Ships of War, their Restitution has been made, the Party relieved paying his offering to the Admiral, commonly called *Salvage Money*.

*a* Res que intra  
Præsidia perdu-  
ctæ nondum  
sunt, quanquam  
ad hostibus oc-  
cupatæ Domi-  
nium; non mu-  
tatunt ex Cen-  
tium jure. Gro-  
tius de jure  
Bellæ ac Pacis  
l. 3. c. 9.  
*b* Trin. 17. Car.  
I. in B.R. Mar-  
she's Reports.

*c* For this is  
not an absolute  
Property im-  
mediately ve-  
sted in the Cap-  
tor, upon the  
taking; but a  
conditional  
Property to  
answer the ori-  
ginal debt or  
damage, which

VIII. This right of changing of Dominion or Property, by force of Arms, is so odious, that in the taking of Goods, if by any possibility, the right owners may have restitution, the same hath been done: And although a larger time then 24 hours happens, between the capture and recapture, and so may *pernoctare* with the Captor, yet restitution may be made, and therefore if one Enemy takes the Ship and Merchandize of another Enemy, and brings her into the Ports or Havens of a *Neuter Nation*, the Owners may seize her, and the *Admiral* of that *Neuter Nation*, may in some cases restore the Ship and Goods to their Owners, and the Persons captive to their former liberty: the reason is for that the same ought to have been brought *infra Præsidia*<sup>a</sup> of that Prince or State, by whose Subject she was taken.

A *Dunkirk* having seiz'd a *Frenchmans* Vessel, *super altum Mare*, sold the same with her lading at *Weymouth*; whether it had been driven before she was brought *infra Præsid.* *Dom. Reg. Hispaniæ*: the *Frenchman* coming into Port, then claims the benefit of the Laws of Nations; the King of *England* being then in amity with both their Princes, and that restitution be made; in which case it was resolved by all the Judges, *b* that if there be a Caption by Letters of *Marque*, or by *Piracy*, and the Vessel and Goods are not brought *infra Præsidia* of that Prince or State, by whose Subject the same was taken, the same will not divest the Property out of the Owner; with this agrees the Law Civil, *c* and restitution may be made.

cannot be done without a Judicial adjudication, the opportunity of which he hath lost by bringing the prize into the Country of another Prince, for as to private War, their Countreys are as an *Asyllum per leg. libertat. & de Leg. Jur.*

*Bullbrod* 3.  
part. f. 28. ci-  
ted in *Marsh's*  
Case.

IX. But if the Ships of War of Nations in enmity meet at Sea, and there be a caption, if there be that which is called a *firm possession*, the *Neuter Nation* cannot re-deliver or make restitution of the thing so acquired; and so it was adjudged, where *Samuel Pellagy* with a Ship of War of the *Emperor of Morocco*, took a *Spanish* Ship, and brought the same into *England*, that he could no ways be question'd

for

for the same *criminaliter*, or restitution to be made *civiliter*; for that the King of Spain and the Morocco Emperor were enemies, and the King of England in amity with both, and that such a caption is not called *Spoliatio*, sed *Legalis captio*, in which there can be no restitution made upon, neither of the Stat. of 31. H. 6. cap. 4. or 27. Ed. 3. cap. 13. for he that will sue to have restitution in England for Goods taken at Sea, must prove that the Sovereign of the party was in amity with the King of England. Secondly, that he that took the Goods, his Prince was at the time of the taking in amity with the Sovereign of him whose Goods were taken; for if he, which took them, was in enmity with the Sovereign of him whose Goods were taken, then the same will not amount unto a depredation or robbery, but a lawful taking, as every enemy might take of another.

A Spanish Merchant, before the King and his Council, in Camera Scaccarii, brought a Bill against divers English-Men, wherein setting forth, *quod depradatus & spoliatus fuit*, upon the Sea, *juxta partes Britannia per quendam Virum Bellicosum de Britannia, de quadam Navi*, and of divers Merchandises therein, which were brought into England, and came into the hands of divers English-Men, naming them, and so pray'd process against them, who came in, and pleaded, that in regard this depredation was done by a Stranger, and not by the Subjects of the King of England, they ought not to answer: It was there resolv'd, *Quod quisquis extraneus*, who brings his Bill upon this Statute to have restitution, *debet probare quod tempore captionis fuit de amicitia Domini Regis*, and also, *quod ipse qui eum receperit, & spoliavit, fuit etiam sub obedientia Regis, vel de amicitia Domini Regis, sive Principis querentis, quia si fuerit inimicus, & sic ceperit bona, tunc non fuit spoliatio, nec depredatio, sed legalis captio, prout quilibet inimicus capit super unum & alterum*.

But, if the King of England is in enmity with the States of Holland, and one of their Ships of War takes a Merchant-Man of the King of England, and afterwards another Ship of War of England meets the Dutch-Man and his prize, and in aperto praelio, regains the prize, there restitution is commonly made, the Owners paying their Salvage; so where the prize is recover'd by a Friend in

The getting of Letters of Reprizal against a Nation, does not make a War between both States; nor can they be said to be at enmity.

22. E. 3. f. 23.

2 R. 3. f. 2.

7. E. 4. 14.

13. E. 4. 9.

22. E. 3. f. 23.

2. R. 3. f. 2.

27. E. 3. c. 13.

31. H. 6. c. 4.

which gives Restitution by the Chancellor, and one Judge, and by the Chancellor alone.

Hujusmodi res non tam capta, quam recepta intelligitur: per D. Leg. Pompeius, & per Leg. in Bellis Par, si quis sumum in pr. de cap. & post,



*Per Lig. post-* amity or comes into his Ports, restitution is likewise made;  
*liminium, Par.* but when such Goods become a lawful and just prize to  
*Postliminio. de* the Captor, then should the Admiral have a tenth part,  
*Capt. & postli.* following the religious example of Abraham, after his Vi-  
*Boyce, and Cole,* story over the five Kings.  
*and Claxton,*

Hill. 26, & 27.

Car. 2. in B. R.

Restitution  
 made formerly  
 by a French-  
 Man, who had  
 regained an  
 English prize  
 out of the  
 hands of a  
 Dutch-Man of  
 War.

X. He that is an Enemy, may every where be assault-  
 ed, according to the Laws of Nations; Enemies may  
 therefore be attack'd or slain on our own ground, on  
 our Enemies, or on the Sea: but to assault, kill, or  
 spoil him in a Haven or Peaceable Port, is not lawful; but  
 that proceeds not from their Persons, but from his right  
 that hath Empire there, for Civil Societies have provided  
 that no force be used in their Countreys against Men, but  
 that of Law, and where that is open, the right of hurt-  
 ing ceaseth: the Carthaginean Fleet was at Anchor in Sy-  
 phax Port, who at that time was at peace with the Ro-  
 mans and Carthagineans, Scipio unawares fell into the same  
 Haven, the Carthaginean Fleet being the stronger, might  
 easily have destroy'd the Romans; but yet they durst not  
 fight them: the like did the Venetian, who hindred the Greeks  
 from assaulting the Turkish Fleet, who ride at Anchor in  
 a Haven, then under the Government of that Republique;  
 so when the Venetian and Turkish Fleet met at Tunis,  
 though that very Port acknowledges the Ottoman Emperor,  
 but in regard they are in the nature of a Free Port to them-  
 selves, and those that come there, they would provide for  
 the Peace of the same, and interdicted any hostile attempt  
 to be there made.

Anno 1665,  
 1666. Bell.  
 Angl. cum  
 Batav.

But they of Hamborough, were not so kind to the English,  
 when the Dutch Fleet fell into their Road, where rid at the  
 same time some English Merchants Men; whom they as-  
 sailed, took, burnt and spoil'd, for which action, and  
 not preserving the Peace of their Port, they whereby the  
 Law of Nations adjudg'd to answer the dammage; and I  
 think have pay'd most, or all of it since. But Enemies in  
 their own Ports, may be assaulted, burnt or destroy'd, by  
 the Law of Armes.

This is Jus  
 belli & in Re-  
 publica maxi-  
 me conservanda  
 sunt Jura belli,  
 Reg. f. 129. Ar-  
 rest. f. 129. super  
 bonis Mercator  
 alienig.

XI. If the Ships of any Nation happens to arrive in any  
 of the King of Englands Ports, and afterwards and before  
 their departure, a War breaks out, they may be secured,  
 priviledged without harm of Body or Goods; but under  
 this limitation, till it be known to the King, how that  
 Prince

Prince or Republique of those, whose Subjects the Parties are, have used and treated those of our Nation in their Ports. But if any should be so bold, as to visit our Ports after a War is begun, they are to be dealt with as Enemies.

XII. By the Laws of Nations, generally all things are the Captors, which he takes from his Enemy, or which his Enemies gain'd from another by force of Arms; so likewise all those Goods, that he shall find in his Enemies custody: But then it must be apparently manifest, and evidently prov'd, that it is really the Enemys; for if an English-Man should have Goods in the custody of a Dutch Factor at Cales, and a War should break out between that Prince and that Republique, yet are not the Goods of the English-Man subject to the seizure of the Spaniard, it being apparent, the owner is not a Subject of their Enemies: So likewise if the Goods of Friends are found in the Ships of Enemies, this does not *ipso facto*, subject the same to be prize by the Laws of Nations; though it be a violent presumption, and may justly bear a legal examination, till which there may be a securing of the prize, till adjudication shall pass. So on the other hand, if the Ships of Friends shall be freighted out to carry the Goods of Enemies, this may subject them to be prize, especially if the Goods shall be laden aboard by the consent or privity of the Master or Skipper; though in France they have subjected and involv'd the innocent with the nocent, and making both of them prize: in the late Flemish Wars with England, the Ostenders became obsequious serviceable with their Ships to the Traffick and commerce of both Nations: memorable was the action, when the War was between the two Re-

Some of old have held at Clericus, Agricola & Mercator tempore belli utroque colat commutet, pace fruuntur. Co. 2. Inst. f. 58.

Consul. Maris: c. 273.

Hofis sit ille, & qui intra presidia ejus sunt: Let him be our Enemy, and they that are with in his Guards. Liv. lib. 37. & alibi passim.

Gregor. lib. 9. Romani nos honestissimus

et atque iustissimus credimus possessiones quas Belli Lege captas habemus; neque vero induci possumus ut stulta facilitate deleamus virtute monumenta, si eas illis reddamus, quibus semel perierunt: imo vero tales possessiones, non tantum cum his qui non vivunt civibus nostris communicandis; sed & posteris relinquendas censemus: tantum abest ut partu relinquendo in nos ipsos ea constituamus, que in Hostes constitui solent: Titus Livius his opinion in the Senate of Restitution: VVe Romans believe those possessions to be most honorable and just, which we have taken by the Law of VVar; nor can we be induc'd by a foolish facility to part with the monuments of our Valour, and restore them to those that were not able to keep them; nor do we judge such possessions to be communicated only to our Countrymen now living, but to be left to our Posterity: So far are we from relinquishing what we have got, and dealing with our selves, as if we were our own Enemies. De Veij idem in Romulo narrat Plutarchus.

publiques

publiques, *Venice* and *Genoa*, the *Grecian* Ships being then imploy'd, (as those of *Ostend*) were search'd, and the Enemies pull'd out, but no other matter done; however, it is most certain let the *Commission*, or *Protection* of such Ships be what they will, if Men will venture to trade under such a cloak, it behoves them, that the *Skipper* and his *Crew* be entirely ignorant; for it is his *Action* that will go far in the freeing, or making absolute the prize, and Goods so made prize, the property is immediately gone and changed be the Owner be who he will, he never can claim the same; for the *Laws of Nations* made the Enemies first masters by external Dominion, and then by Conquest, gave the property to the Captor: following that Judgement of the *Romans*, whatsoever they got of their Enemies by valour, they would transmit, to their Posterity by right.

Hist. 5.

XIII. 'Tis not against nature, to spoil the Goods of him, whom it is lawful to kill; and by the *Laws of Nations*, it is permitted that the Goods of the Enemies may be as well spoiled as taken; and *Polybius* observes that all things of the Enemies may be spoiled, their Ships, Goods, Forts, &c.

3. Eliz. in C. B.  
Owens Report,  
fo. 45 but q. of  
that Case.

XIV. And though it may happen sometimes, that a War may break out, and there may be no public denouncing or proclaiming the same; that if a Friend, or Neuter should assist an Enemy with *Contraband Goods*, that is *Armes*, &c. whether upon such a caption, the Goods may be made prize; the resolution of which will depend on these Considerations.

Grotius lib. 3.  
cap. 3.

First, by *Natural Law*, where either force offer'd, is repelled, or punishment exacted, of one that hath offended; there needs no denunciation, for Princes are not to stand debating with words or arguments, being injured beyond words: For War undertaken to resist violence, is proclaim'd not by an Herald, but by Nature: for it is no more then the invading of one for another, or taking of the Goods of the debtor, to answer the creditor damage.

Secondly, *Interpellation* is introduced by the *Laws of Nations*, whereby Princes or Republics, having received injuries; may apparently shew that they had no other way to recover their own, or that which is due to them; for such *Interpellation* following after injuries committed, constitutes that Prince or State in a fault that shall not render satisfaction,

Thirdly,

Thirdly, admitting that *Interpellation* hath gone, and satisfaction hath been required for the damage, and no satisfactory return hath been made, whether then the Ships or Territories of the Enemy may be assaulted: and for that it has been conceiv'd they may, for denunciation is no more but to signify that the Parties, against whom the same is commenc'd, are unjust, and will not do right, and therefore War is begun by the Supream Power: now Princes or Republics, having done that which by the Law of Nature they were not oblig'd to do, that is after a wrong done, abstain'd from War by Friendly demanding of satisfaction or reparation, (which is requir'd only by the Laws of Nations) and publique Justice being deny'd them, there remains no other or further obligation on the State, the same amounting and indeed is an apparent defiance; and *Proclamation* is no other.

So that if *Indiction* is not necessary, the caption of such Ships may subject them to be prize, (perhaps the *Leagues* of the several Countries, may have provided for cases of the like nature.)

X V. And although the Goods of Friends, according to the circumstance of the case, may be preserv'd by adjudication, and restor'd to their owner; yet all manner of Goods have not that privilege, for though the *Freedom of Trade* preserves the Goods of Friends against the rigour of War, yet it does not those Goods that supplies the Enemy for War, as Money, Victuals, Ships, Armes and other things belonging thereto, for to supply an Enemy that invades our right, or seeks the destruction of our Countries, is a liberality not to be allow'd of, and it certainly stands with necessity, that if I cannot safely defend my self, or endamage my Enemy without intercepting the things sent, it may justly be done: but when such Goods are seized, whether they give the Captor a right of property, or a right by retention, to compel that neuter Nation to give Caution for the future, by Hostages or Pledges, not to supply the Enemy, may be a question. The Romans, who had brought Victuals to the Enemies of Carthage, were taken by the Carthaginians, and again rendred upon request; the Hollanders in the heat of the War between the Sweden and Polland, never suffer'd themselves to be interdicted with either Nation; the same State when they had War with Spain, they intercepted the

*Vide Treaty*  
1. Decemb; at  
London 1674.  
Art. the third,  
what is meant  
by Goods Con-  
triband, or  
prohibited  
Merchandize;

*Cambden. vi-*  
*di anno 1589,*  
1595.



## Of Ships of War.

the French Ships, passing to or for Spain, but restor'd them.

*Plutarch.*

*Mursius in his  
Danish Hist.  
l. part. 2.*

And Pompey, in the History of the *Mitridatic War*, set a Guard on the *Bosphorus*, to observe if any Merchant failed in thither; whosoever did, and was taken, was surely put to death; so *Demetrius* when he possessed *Attica* with his Army, having blockt up *Athens*, hang'd up both the Master and Commander of a Ship, who attempted to bring in Corn: the *Hollanders* having blockt up *Dunkirk*, some *English* Merchants Ships did attempt to enter, but were deny'd by the *Hollanders*.

*Vide Tit. Cu-  
stoms.*

*31. Eliz. C. B.  
Owen 45.  
Vide the Pro-  
clamation of  
Holland to En-  
gland, &c.*

*Bald. ad l. 2.  
c. de Sev. n.*

*70. Under the  
name of Con-  
traband may  
be compre-  
hended Arms  
only; as pieces  
of Ordinances,  
with all Im-  
plements be-  
longing to  
them, Fire-  
Balls, Powder,*

*matches, Bullets, Pikes, Swords, Lances, Spears, Holberts, Guns, Mortar-Pieces, Petards, Granadoes, Musket-rests, Bandaliers, Salt-peter, Muskets, Musket Shot, Helms, Corsets, Breast-Plates, Coats of mail, and the like kind of Armature; so for Horses and other warlike Instruments, v. Marine Treaty between Eng. & Holl. 1. Decemb. 1674, art. 3.*

Most certain, if a *Neuter Nation* hath had notice of the War, and caution given them (as is usual) not to supply the Enemy with counterband Goods, as they call them; if such be the case, the prize is become absolute the Captors: So *Queen Elizabeth* did, when she seized on the 60 Sail of the *Hansatique Towns*, who were carrying of Goods, *ropas contrabanda*, to the *Spaniard* her Enemy; she condemned them, and made them absolute prize; for as *neuters* are not compellable by the rigour of War, to give any thing against their will, so must they not against the will of each Party afford such things, as may damage one another; for Persons or Nations having had notice of the War, which is done, and caution given sometimes by Proclamation, or some other publick Edict, signifying the right of their cause; shall afterwards gather to, and assist the Enemy, whether associates, neutrals, or Subjects, the same yeilds a right, so far as to them, not only to the charge and damage that may fall thereby, by making them prize; but may make them obnoxious to punishment; For it is the duty of those that abstain from War to do nothing for the strengthening of him, who maintains a bad cause, whereby the motions of him that wagem a just War may be retarded, and where the cause is doubtful, they ought to shew themselves equall to both, permitting passage, Baking, Dressing, and affording provision for each Army, or Navy,

*L. Ami-*

*L. Æmilius Prætor*, accused the *Tejans* for victualling the Enemy's Navy, promising them Wine, adding, that unless they would do the like for the Navy of the *Romans*, he would account them as Enemies: but common experience hath taught Nations and Kingdoms, when they declare a Neutrality, to make provision by way of League with both the Nations at War, that when it should happen the Armies of both, or any draw towards their Territories, it might be lawful for them to exhibit the Common offices of humanity to both.

Sol likewise it is Ships, Masts, and whatsoever shall be thought or ascertained capable of Arming an Enemy. *Bartol. l. nullus nunc. l. 2. de Judæis Cælicolis.*

The *Venetians* having so far prevail'd against the *Turk*, in the Island of *Candia*, that they held the City of *Canea*, straightly besieg'd by Sea and Land, whereby they had reduc'd it to great extremities, it happened at that time to ride about 7 stout Merchant Men, in the Port at *Smirna*; the General of the *Venetians* being jealous of their joyning with the *Turkish* Armado, desired to know their minds, who answer'd, they would prove neuter in the dispute; but afterwards (though at first the Captains all refused) upon the threatening of the *Grand-Seignior*, to lay an Embargo on all the Goods of the *English* Nation in his Dominion, and to make slaves of their Persons; those Captains were forced to joyn with the *Turkish* Forces, who beat the *Venetians* from before *Canea*, and so reliev'd it; the *Venetians* Embassador complain'd to the then Powers in *England*, but could have no relief, being answer'd, that those Ships in the *Turks* power, were Subject to it.

Anno 1650, or 1651. vide R. Cooke of the Church's State in equal danger with the Trade.

the French Ships, passing to or for Spain, but restor'd them.

*Plutarch.*

*Murinus in his  
Danish Hist.  
l. part. 2.*

And Pompey, in the History of the *Mitridatic War*, set a Guard on the *Bosphorus*, to observe if any Merchant sailed in thither; whosoever did, and was taken, was surely put to death; so *Demetrius* when he possessed *Attica* with his Army, having blockt up *Athens*, hang'd up both the Master and Commander of a Ship, who attempted to bring in Corn: the *Hollanders* having blockt up *Dunkirk*, some *English* Merchants Ships did attempt to enter, but were deny'd by the *Hollanders*.

*Vide Tit. Cu-  
stoms.*

*31. Eliz. C. B.  
Owen 45.*

*Vide the Pro-  
clamation of  
Holland to En-  
gland, &c.*

*Bald. ad l. 2.  
c. de Sev. n.*

*70. Under the  
name of Con-  
traband may  
be compre-  
hended Arms  
only; as pieces  
of Ordinances,  
with all Im-  
plements be-  
longing to  
them, Fire-  
Balls, Powder,*

*matches, Bullets, Pikes, Swords, Lances, Spears, Holberts, Guns, Mortar-Pieces, Petards, Granadoes, Musket-rests, Bandaliers, Salt-peter, Muskets, Musket Shot, Helmets, Corslets, Breast-Plates, Coats of mail, and the like kind of Armature; so for Horses and other warlike Instruments, v. Marine Treaty between Eng. & Holl. 1. Decemb. 1674, art. 3.*

Most certain, if a *Neuter Nation* hath had notice of the War, and caution given them (as is usual) not to supply the Enemy with counterband Goods, as they call them; if such be the case, the prize is become absolute the Captors: So *Queen Elizabeth* did, when she seized on the 60 Sail of the *Hansatique Towns*, who were carrying of Goods, *ropas contrabanda*, to the *Spaniard* her Enemy; she condemned them, and made them absolute prize; for as *neuters* are not compellable by the rigour of War, to give any thing against their will, so must they not against the will of each Party afford such things, as may damage one another; for Persons or Nations having had notice of the War, which is done, and caution given sometimes by Proclamation, or some other publick Edict, signifying the right of their cause; shall afterwards gather to, and assist the Enemy, whether associates, neuters, or Subjects, the same yeilds a right, so far as to them, not only to the charge and damage that may fall thereby, by making them prize; but may make them obnoxious to punishment; For it is the duty of those that abstain from War to do nothing for the strengthening of him, who maintains a bad cause, whereby the motions of him that wagem a just War may be retarded, and where the cause is doubtful, they ought to shew themselves equall to both, permitting passage, Baking, Dressing, and affording provision for each Army, or Navy,

*L. Ami-*

*L. Æmilius Prætor*, accused the *Tejans* for victualling the Enemy's Navy, promising them Wine, adding, that unless they would do the like for the Navy of the *Romans*, he would account them as Enemies: but common experience hath taught Nations and Kingdoms, when they declare a Neutrality, to make provision by way of League with both the Nations at War, that when it should happen the Armies of both, or any draw towards their Territories, it might be lawful for them to exhibit the Common offices of humanity to both.

Solike as it is Ships, Masts, and whatsoever shall be thought or ascertained capable of Arming an Enemy.  
Bartol. l. nullus nunc. l. 2.  
de Judeis Cælicolis.

The *Venetians* having so far prevail'd against the *Turk*, in the Island of *Candia*, that they held the City of *Canea*, straightly besieg'd by Sea and Land, whereby they had reduc'd it to great extremities, it happened at that time to ride about 7 stout Merchant Men, in the Port at *Smirna*; the General of the *Venetians* being jealous of their joyning with the *Turkish* Armado, desired to know their minds, who answer'd, they would prove neuter in the dispute; but afterwards (though at first the Captains all refused) upon the threatening of the *Grand-Seignior*, to lay an Embargo on all the Goods of the *English* Nation in his Dominion, and to make slaves of their Persons; those Captains were forced to joyn with the *Turkish* Forces, who beat the *Venetians* from before *Canea*, and so reliev'd it; the *Venetians* Embassador complain'd to the then Powers in *England*, but could have no relief, being answer'd, that those Ships in the *Turks* power, were Subject to it.

Anno 1650, or 1651. vide R. Cooke of the Church's State in equal danger with the Trade.



## CHAP. II.

### Of Letters of Marque, and Reprizal:

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>I.</b> Of Reprizals generally considered, and for what.</p> <p><b>II.</b> That Reprizals are unlawful by the Laws of Nature and the Romans.</p> <p><b>III.</b> That the same by the Laws of Nations, are now become lawful.</p> <p><b>IV.</b> The advantage that accrues by the same.</p> <p><b>V.</b> The causes that requires the same.</p> <p><b>VI.</b> Of the things necessarily requisite for the observing them.</p> <p><b>VII.</b> Reprizals ordinary and extraordinary, according to the Laws of England.</p> <p><b>VIII.</b> Of the Interest of Princes of granting them, and Letters of Request</p> <p><b>IX.</b> The difference of injustice offer'd to Subjects and Forraigners; when and where the one is concluded, and not the other.</p> <p><b>X.</b> What is meant by denying of right, and doing of injustice, and where Reprizals take rooting, and where not.</p> <p><b>XI.</b> Of Reprizals awarded in cases ordinary.</p> <p><b>XII.</b> Of Reprizals issuing forth in cases extraordinary.</p> <p><b>XIII.</b> Of Letters of Request precedent, allotting a time certain for satisfaction.</p> | <p><b>XIV.</b> Domicil not origination subject to Reprize.</p> <p><b>XV.</b> Reprizal not granted if the spoil was occasioned by war.</p> <p><b>XVI.</b> Of Persons exempt from Reprizal by the Laws of Nations, Canon and Civil Law.</p> <p><b>XVII.</b> Where Ships or Goods are subject to Reprize, and where not.</p> <p><b>XVIII.</b> When right deny'd, whether life is engag'd, and whether Persons refusing to yeild may be slain.</p> <p><b>XIX.</b> Goods taken by Reprize, where the Property is altered, and where otherwise.</p> <p><b>XX.</b> Where many Ships are present, and one becomes Captor, whether the spoil must be divided or remain his, that became Master.</p> <p><b>XXI.</b> Of the Captors duties after a Prize taken, and its exemption from Custom.</p> <p><b>XXII.</b> Restitution, when to be made, after the debt satisfy'd.</p> <p><b>XXIII.</b> Contribution, whether it can be by the Laws of England to him whose Goods are taken by Reprize.</p> <p><b>XXIV.</b> Commissions awarded for the enquiring of depredations, under which the Parties may probably obtain recompence,</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**I.** **R**reprizals known to us by the word of *Represalie*, or Letters of Marque, in Law have other appellations, as *Pignoratio*, *Clarigatio* and *Androlepsia*, &c. In imitation of that *Androlepsia*, among the Greeks, to seize the three next Citizens of that Place, whether the murderer had fled, and was always given to him who required revenge of the offender; the word (*Reprisals*) is from the French *reprendre* and

and *reprise*, i. e. *resumptio*, that is to re-take or take again one thing for another, like our *Saxon Withernam*. Though the Art is now become lawful by the Law (indeed the *consent*) of *Nations*, yet it must have its Standard mark, for the same cannot be done by any private authority, but only by the power of that Prince or Republique, whose Subject the injur'd Person is, nor is the same grantable by authority; but where the Party injur'd has *Justice deny'd* him, or the same *illegally delay'd*.

I. L. By the *Law of Nature*, no Man is bound for anothers Act, but only the successor of his Estate, for that Goods and Estate should pass with their *Burdens*, was introduc'd together with the *Dominion* of things; hence it is that the Son cannot be molested for the debt of his Father, neither the Wife for the debt of the Husband, nor the Husband for the debt of the Wife; the same being against natural equity, that one should be troubled for the debt of another.

So it is, that no particular Men owe not, or are oblig'd for the debt which the *Community* owes, that is if the *Community* have any Goods; but if Money be lent to a *Community*, each particular is naturally bound, as they are a part of the whole, if the Stock publique be wanting: If one lends my Country Money (says *Seneca*) I will not call myself his debtor, yet will I pay my share: And again, being one of the people, I will not pay as for myself, but contribute as for my Country: Naturally, nay, by the very *Roman Law*, \* one Village was not bound for the other, nor one Mans Possessions charged for another; no not so much as with the debts publique: the reason being added, that it was against reason for one to be charged with the debt of another.

III. And though by the *Law of Nature*, one Mans Goods are not ty'd for the debts of another, no nor for those of the *publique*; yet by the voluntary Law of Nations, the same might be introduced and brought in, and the same may stand well with the *Laws of Nature*, for that might be introduced by custom and tacit consent, when even sureties without any cause, may subject and make lyable their Goods and Estates for the debts of a Stranger. So likewise, that for any debt, which any *Civil Society*, or the *Head* thereof ought to make good, or because the *Sovereign* or a *Head* hath not done right in anothers debt, but

Reprisals are all one, both in the Common and Civil Law: *Reprisalia est potestas pignoriandi contra quemlibet, de terra debitoris data creditori per injurias & damnis acceptis vocabulari utriusque Juris.* 27. E. 3. Stat. 2. cap. 17. † *Leg. unica, c. ut null. ex vicanis. c. ne uxor pro mar. & ne fil. pro patre, totis tit. ulpian. Leg. fisci selt. quod cuique univers. nam.* Et: singuli debent non tantumquam proprium, sed tanquam publicum publici partem. *Seneca lib. 6. de Benefic. c. 20. & cap. 19.* \* *Leg. nullam, c. de Excus. & Exactionibus.*

In Nov. Just.  
520 134. C. 4.  
nisi de injuriis  
in sexto.

Just. Inst. de  
Jure Nat.

Baldus 3. conf.  
58. Bartol. de  
Repress. q. 5. ad  
ter. num. 9.

¶ Herod, to  
whom it was  
not lawful to  
make War a-  
gainst the A-  
rabians, might  
lawfully use  
pignoration.  
Joseph. lib. 6.  
Livy lib. 34.

C. Si senten-  
tie c. 16. de  
Sent. excom. in  
6. constit. Leg.  
qui restituere,  
de rei vindic.

but hath made himself lyable to render satisfaction; such a Society may oblige and make lyable all their Goods corporeal or incorporeal, for the reddition of satisfaction. Hence it was, as the Great *Justinian* observes, that this custom was constituted by the *Nations*, grounded on the urgency of humane needs; asserted with the greatest of necessities: since without this, great licence would be given and tolerated, for the committing of depredations and injuries; especially if only the Goods of Rulers were made lyable, who seldom possess any thing, that for satisfaction, the injured may easily come by, whereas those private Men, whose commerce are various, may be caught for recompence, sometimes with the greatest of ease, and freest from danger. Besides, the Owners of such prize, being members of the same Society, might more easily obtain mutual right, for satisfaction of the injur'd, and their own future indemnity then Forraigners could, who without such a tye, would be very little regarded.

IV. The benefit which this custom of obligation hath now introduced, is become universal, and common to all Nations; so that People that are at one time griev'd with this burden, at another time might be eased of the same, and by such taking, the oppressed might the more easily obtain Justice, & War be prevented. The *Carthagineans* would not suffer *Ariston* the *Tyrian* to be taken; for said they, the same will befall the *Carthagineans* at *Tyre*, and in other Towns of Trade, whereto they resort.

V. A due administration of Justice, is not the least sense, wherein Princes are styled Gods: To deny or delay Justice, is injustice; Justice is every Mans right, who hath not forfeited what he might claim by the *Jus Gentium*.

If therefore the Party cannot obtain his Definitive Sentence or Judgement, within a fit time against the Person of whom he complains, or if here be a Judgement given against apparent right and Law; yet if no relief can be had, the Bodies or movables of his Subjects, who renders not right, may be taken.

VI. In the prosecution of which there must be,

1. The Oath of the Party injur'd, or other sufficient proof, touching the pretended injury, and of the certain loss and dammage thereby sustain'd,

2. A proof of the due prosecution for the obtaining a satisfaction in a legal way.
3. Protestation or denial of Justice.
4. A Complaint to his own Prince or State.
5. Requisition of Justice by him or them, made to the Supreme Head or State, where Justice in the ordinary course was deny'd.
6. Persistency still, in the denial of Justice:

All which being done, Letters of Reprisal under such cautions, restrictions, and limitations, as are consonant to Law, and as the special case may require, may issue not only by the *Jus Gentium*, and *Civile*, but by the antient and Municipal Laws of this Kindom.†

VII. The Reprisals grantable by the Laws of England, are of two sorts, Ordinary and Extraordinary. The Ordinary are, where any English Merchants or their Goods are spoiled, or taken from them, in parts beyond the Sea by Merchants Strangers, and cannot upon Suit or the Kings demanding of Justice for him, obtain the same, he shall have upon testimony of such prosecution, a Writ out of the Chancery, to arrest the Merchants Strangers, of that Nation their Goods here in England; the which is grantable the Subject oppress'd of Common Right, by the Chancellor or Keeper of England, who always in such case hath the approbation of the King or Council, or both, for his so doing.

The Extraordinary are by Letters of Marque, for Reparation at Sea, or any place out of the Realm, grantable by the Secretaries of State, with the like approbation of the King or Council, or both.

VIII. And as Princes by the Laws of Nations, are responsible for injuries publique, so should they by the most prudent ways imaginable, prevent those that are private, not suffering Forraigners, if possible, to receive wrongs in their Countries: For, as the Florentine observes, If a Man be exceedingly offended, either by the publique, or by any other private band, in a Forraign Nation, and cannot obtain reparation according to Justice, he will never leave blowing the coals, or cease promoting the injury, till the flame break out in War; in which he cares not if he sees the ruin of that Kingdom or State, where he receiv'd his wrongs.

Nor should the Prince or State of the Person injur'd,

B

value

† Magna Charta C. 30. the later Clause.

Clauſe 7. Johannis Reg. m. 22.

Pat. 15. E. 3. part. 2. dorſ.

48.

Pat. 23. H. 6.

part. 2. dorſ.

14, 15.

Fitz. H. N.

Bre. fo. 114.

Reg. 129. Pat.

Rolls 14. 14.

H. 6. par.

1. dorſ. 15.

17. 22. & M. 5;

6, 7. par. 2.

dorſ. 18. 22.

E. 4. par. 2. M.

25. dorſ. 2 & 4.

Machiavel on

his Tit. Liv. C.

A Prince in

this later Age

loſt his Coun-

try but for a

load of Sheep

Skins.



value his misfortune at so low a rate, as to deny him Letters of Request; for that were to heap up injury upon injury; but likewise if Justice be deny'd after such Request, to Arm him with power to take satisfaction by Reprise,

*Leg. qui resti-  
tuere. de rei  
vindicat.*

*vi manu & militari.*

Generally there always preceeds Letters of Request, 2 or 3, more or less; and according to the satisfaction, sufficient or insufficient, returned in answer to the same, Commissions are awarded.

**IX.** *Subjects* cannot by force hinder the Execution, even of an unjust Judgement, nor lawfully pursue their right by force, by reason of the efficacy of the power over them: But *Forraigners* have a right to compel, which yet they cannot use lawfully, so long as they may obtain satisfaction by Judgement. But if that ceases, then Reprisal is let in.

*Res judic. pro  
vitare habe-  
tur; yet it is  
as true, Judex  
male judicans  
pro injuria te-  
netur.*

*Et cum per in-  
juriam Judicis  
domino remque  
debitoris non  
fuisse, abstu-  
lisset creditor,  
quasi obliga-  
tum sibi; &  
quaretur, an  
soluto debitor  
restitui eam op-  
porteret; de-  
bitori Sca-  
vola restitu-  
dam probavit.  
Leg. scriptu-  
ram ff. de distr.  
pign.*

*\*Verns debitor  
licet absolutus,  
si natura ta-  
men debitor  
permanet. Pau-  
lus Leg. Julia,  
D de cond. in-  
debitor.*

Now Judgement is obtained either in the *ordinary* course, by way of *Prosecution*, or *Suit*, or *Appeal* from the same, after Sentence, or Judgement given to a higher Court; or else in the *Extraordinary* way, which is by way of *Supplication*, or *Petition* to the *Supream Power*: but we must understand that to be, when the matter *in controversy* is, *tam quod merita quam quod modum procedendi*, not doubtful, for in doubtful matters the presumption is ever for the Judge, or Court.

But the Reprisal must be grounded on a wrong Judgement, given in matters *not doubtful*, which might have been redressed one way or other, either by the ordinary or extraordinary power of the Country or place; and the which was apparently *perverted*, or *deny'd*.

But if the matter be doubtful, then otherwise; for in causes dubious or difficult, there is a presumption always that Justice was truly administred by them, who were duly elected to publick Judgements.

**XI.** And yet in this later case, some \* who are of opinion, that if the cause were dubious, and if the Judgement were against apparent right, the Stranger oppressed, is let into his satisfaction; and the reason is because the Judge's authority is not the same over *Forraigners*, as over *Subjects*, for the reason above mentioned.

If an *English Merchant* shall prosecute a Suit in the *Ordinary Courts of Law* beyond Seas, and Sentence or Judgement

ment shall pass against him, from which he appeals to the *Supream Judgement*, and there the first Judgement or Sentence is affirmed, though the Complainant hath received a Judgement against the *real right* of the cause, yet this will be no cause for Letters of Reprisal, though perhaps it may occasion Letters of *Request*, (if there be strong circumstances for the same) to have a rehearing of the cause.

But if an *English* Man shall recover a debt there, and then the Officer, having the debtor in custody, will wilfully let the Prisoner escape, and then become insolvent; the same may perhaps occasion Reprisal.

In *England*, if a Forraigner brings an Action personal against *I S.* and the matter is found *special*, or *general*, and the Party prays Judgement, and the Court refuses it; and then the Defendant dyes, and with him the Action, (the nature of it being such) the Party is here without remedy, the same may occasion Letters of Reprisals, if it be accompanied with those circumstances, that evince an apparent denial of Justice, *i. e.* as putting it off from *Term to Term*, without cause.

An *English* Man pursues his right in the legal Courts beyond Seas; and the Military Governor opposes the prosecution, and by force conveys away the debtor and his Goods, the Sentence or Judgement is obtained, its ultimate end being *Execution*, being thus frustrated, may occasion Letters of Reprisal.

XII. Persons murdered, spoiled, or otherwise dampnify'd in hostile manner, in the Territories or places belonging to that King, to whom Letters of Request are issued forth, if no satisfaction be returned; Letters of Reprisal may issue forth; and the Parties petitioners are not in such cases compelled to resort to the Ordinary prosecution: But the Prince of that Country, against whom the same are awarded, must repair the damage out of his or their Estates, who committed the injuries; and if that proves deficient, it must then fall as a common debt on his Country.

XIII. Such Letters of Request generally allot a time certain for damages, to be repaired, if not Reprisals to issue forth.

*Flemings*, on the *English* his Majesty in 1625. issued forth his Letters of Request to the States of *Holland*, for satisfaction within 18 Months; otherwise Letters of Reprisal. *Vide Journals* of that year, and *Leo Aitzma* p. 48. 13. 41. 82.

*Nati vendemus, nulli negabimus, aut differemus Justitiam*, Grand Charter. c. 66. 2. Inst. 56.

Case of Slaughter, Lee against the Governor of *Leighorn* upon the Petition of *Gould & Canham* Merchants in Nov. 1670; on which two Letters of Request are gone to the Great Duke of *Tuscany*, for redress: \*after the Massacre at *Ambony*, and the other depredations committed by the

## Of Letters of Marque and Reprisal.

XIV. It is not the place of any Mans *Nativity*, but his *Domicil*; not of his *Origination*, but of his *Habitation*, that abjects him to Reprise: The Law doth not consider so much where he was Born, as where he lives; not so much where he came into the World, as where he improves the World.

If therefore Letters of Reprisal should be awarded against the Subjects of the *Duke of Florence*, and a Native of *Florence*, but denized or Naturalized in *England*, should have a Ship on a Voyage for *Leighorn*, if a caption should be made, the same is not lawful, nor can the same be made prise.

XV. Nor doth it any where appear, that *Reprisals* can be granted on misfortunes happening to Persons or their Goods, residing or being in Forraign parts in time of War there; for if any misfortune happens, or is occasioned to their effects, or to their Persons, then they must be contented to sit down under the losse; it being their own faults, they would not fly or relinquish the place, when they fore-saw the Country was subject to the spoil of the Souldiers, and devastation of the Conqueror.

*Vide Machias vel History of that War.* The factions of the *Guelfs* and *Gibellins* in *Florence*, warring against each other. The *Guelfs* obtaining the Victory, and thrusting the *Gibellins* out of it, after they had

*Mich. 9. E. 1. Rott. 53. (in Thesaur. Recept. Regis in Scac.) Coram Rege Florentia.* taken the City. *Domum cujusdam Hugonis de Papi in hoc Regno Angliæ demorantæ diruerunt*, and plundered his Goods therein, *qui Hugo supplicavit Dom. Regi, ut inde Itali Mercatores* (of that faction and City then in *England*) *emendas hic sibi facerent*; upon which *adjudicatum fuit*;

*Vide Rott. Vassonie 28. E. 3. Rott. 7. pro Rob. Draper & alius Civibus Corke in Hibernia.* *quod dicti Mercatores, dicto Hugoni satisfaciant pro damnis susceptis, & destructione domus sue*: upon which a Writ of error was brought, and the Judgement was reversed, in these words; *Quod non est consuetudo Angliæ de aliqua transgressione facta in aliena Regione, tempore Guerre, vel alius Civibus, alio modo, consideratum est, quod totus processus & ejus effectus provocentur, &c.*

XVI By right (for so it is now called of rendring like for like) there are many Persons exempted, and those whose Persons are so privileged, have also protection  
*Rex facisne tu Regium Nuntium Populi Romani Quirit. vasa comitesq; meos.* The Embassadors of the Romans being ill, used by the Carthaginians, and Scipio's Army having surprized the Embassadors of the Carthaginians, was demanded what should be done to them, answered, not as the Carthaginians have done to the Romans.

for their Goods, some by the Laws of Nations, some by the Civil Law, others by the Common Law; among which *Embassadors* by the Laws of Nations, their retinue and Goods are exempt, coming from him, who awarded the Reprise, the Laws of Nations not only providing for the Dignity of him that sends, but likewise the security going and coming of him that is sent.

Nor against those that travel for Religion, nor on Students, Schollars, or their Books; nor on Women or Children; by the Civil Law: nor those that travel through a Country, staying but a little while there.

By the *Canon Law*, Ecclesiastical Persons are expressly exempt from Reprisals,

A Merchant of another place then that against which Reprisals are granted, albeit the Factor of such Goods were of that place, are not Subject to Reprisals.

XVII. Ships driven into Port by storm or stress of weather, have an exemption from the Law of Reprisals, according to the *Jus commune*; but by the Law of England otherwise, unless expressly provided for in the Writ, or Commission.

But if such Ship flies from his own Country to avoid confiscation, or some other fault, and is driven in by stress off, she may then become subject to be prize.

But it is not lawful to make seizure in any Ports, but in his who awarded the Reprisal, or his against whom the same issued; for the Ports of other Princes or States, the Peace of them are to be maintained.

XVIII. \* Ships attacked by those that have Letters of Reprise, and refused to be yielded up, may be assaulted, and entered; and though it may fall out not by intention, but by accident, that some of those that so resist, may happen to be slain, yet the fault will lie at their own doors, for hindering the execution of right, and that which the Law most justly approves of.

XIX. This right of changing of *Dominion*, is so odious, that in the taking of Goods, if by any possibility the right Owners may have restitution, the same has been done; and though a larger then 24 hours may happen between the capture and recapture, and so may *pernoctare* with the Captor; yet restitution may be made.

must be by the life of Man, ought to be omitted. *Lib. 2 cap. 10. Livy lib. 2.*

\* *Vita autem Subditorum innocentium, ut ex tali causa obligetur, forte creditum fuit apud aliquos Populos eo nimium quod crederent unicuique hominum ius vite plenum esse in se, & ad Rem publicam potuisse transferri, quod minime esse probabile, nec sauctiori Theologiae consentaneum. Grotius de Jure belli lib. 3. cap. 2. §. 4. And seems to be of opinion by the Law of Charity, that the prosecution of right for a Man's Goods, which inevitably*



## Of Letters of Marque and Reprisal.

Bartol. in Leg.  
si quid Bello D.  
de cap. Ang. &  
Salic. in Leg.  
ab hostibus, C.  
de Capt. Const.  
Gal. 20. tit.  
13. Art. 24.  
Consul. Maris  
287.  
Trin. 17. Car. I.  
in E. R. Marsh  
Reporr. Res  
qu. infra Pre-  
sidia perducte,  
nondum sunt  
quanquam ab  
hostibus occu-  
pate, Dominum  
non mutarunt,  
ex Gentium  
Jure.

And therefore if he, who hath Letters of *Mark* or *Reprisal*, takes the Ships and Goods of that Nation, against whom the same are awarded, and brings the same into a *Neuter Nation*, the Owners may there seize her, or there the *Admiral* may make restitution by Law; as well the Ship's Goods to the Owners, as the Persons captives to their former liberty; for that the same ought first to have been brought *infra Præsidia* of that Prince or State, by whose Subjects the same was taken.

And with this agrees the *Common Law*; for a *Dunkirker* having taken a *French Vessel*, sold the same at *Weymouth*, whether it had been driven before it was brought *infra Præsidia Dom. Regis Hisp.* it was in such case rul'd, that if a Ship be taken by Piracy, or Letters of *Mark* and *Reprisal*, and is not brought *infra Præsidia* of that Prince or State, by whose Subject the same was taken, the same could not become lawful prise, nor were the Owners by such a caption divested of their property.

But if the Caption be Ships of War, the property will be immediately in the Captors, and never divested, unless afterwards *vis manu & forti*, be in Battle regained.

XX. Upon the sharing the *Spoil* of the captivated Ships, regard is had to the Ships present, not the Captors only; for his reward must be the encouragement of his Prince, like the *Roman Coronas*, of which there were various, according to the achievement of the Conqueror, in imitation of which our *Sovereign* in his Royal encouraging *Medals*, follows the example, to his deserving Commanders, as so many *Ensigns* to enflame Noble Souls to the performing Acts of Glory and Renown. I say the profits of Prises are to be equally divided amongst the Ships present, and not solely to the Captor; for if Letters of *Reprisal* are granted to two Ships, and they happen both of them at Sea to meet a prise, and the one attacks and enters her, by means of which she becomes *absolute* the Conquerors; yet the other hath right to an equal distribution with the Captor, both in Ship and Goods, although he did nothing in the Conquest: the reason is, for although he mist the opportunity of taking her, yet the presence of his Vessel armed and prepared for Battle, at the time of taking, became a terrour to the Ship that was so conquered: And by the Law presumed *sine ejus*, that

Mich. 32. Eliz.  
Somers and Sir  
Ric. Bulckleys  
C. Leonard 2.  
part 181.

that the other Ship would not or could be so taken; which Law hath passed the current, and approbation of the *Common Law*, as reasonable, just and equitable, and may be pretended or surmised to entitle the party Captor, to the making restitution of a moyety to his Companion then present.

But if it should so happen, that those to whom Letters of *Mark* are granted, should instead of taking the Ships and Goods of that Nation, against whom the same were awarded, take or spoil the Goods of another Nation in amity, this would amount to a down-right Piracy. And the Persons offenders should for such fault create a forfeiture of their Vessel, and the Owners must be for ever concluded by the same, notwithstanding such *Commission*.

*Trin. 3. Jac. in B. R. Rols fo. 530. Sir Francis Moors Rep. 1. Jac. waltham, vers. Mulgar.*

XXI. Therefore, Letters of *Mark* or *Reprisal* issue not without good and sufficient caution, first given for the due observance thereof, according to Law; the transgression of which creates a forfeiture of the same.

And therefore, having taken a prise, and brought the same *intra Præsidia*, the Captor must exhibite all the Ship Papers, and captived Marriners to be examined in order to adjudication, till when, Bulck ought not to be broken without *Commission*, nor may the Captain of the Captor suffer an imbezlement of the lading, or sell Barter or dispose of any part, without *Commission*; for the King hath a proportion in all prises.

*3. Eliz. cap. 4.*

Such Goods so brought in, are not subject to pay Customs.

*12. Car. II. called the Act of Navigation.*

XXII. By the Law of *Nations*, *ipso facto*, the Dominion of the things taken by those to whom Letters of *Mark* are granted, become the captors, till the debt and costs, that is the original dammage and subsequent charges are satisfied; which being done, the residue ought to be restored: So the *Venetians* used their equity, having taken the Ships of *Genoa*, did not spoil any of the lading, but preserved the same very carefully, till the debt being pay'd, which done, restitution was made of the things entirely, without diminution.

*Gregorius 1. 9.*

XXIII. When for the fault perhaps of a few, a debt becomes *National*, by reason of which the Goods of the Innocent become lyable (if taken for satisfaction) whether by the Law of *England*, the Party ought to have Contribution

Fitz. H. N. B.  
fo. 162. Old. N.  
Bre 103. Reg.  
Orig. fo. 176.  
\* Seneca Benef.  
cap. 19.

tribution, most certain by the *Common Law*, where more are bound to one thing; and yet one is put to the whole burden, the Party may have process called *Contributione facienda*, for his releif: but when a debt becomes universal or National, it seems otherwise, *For if one lends my Country money, I will not call my self debtor, yet I will pay my share:* \* so it may seem equitable by the Laws of Charity, though not compellable by the Laws of the Land.

Pat. 26. E. 3.  
pars 1. M. 16.  
Dorso.

XXIV. Yet when depredations have happened to Foreign Merchants, and complaint hath been made, the Kings of *England* have often issued forth Commissions to enquire of the same: and so it was done upon the Petition of some Merchants of *Genoa*, who complain'd against the Inhabitants of the Isle of *Garnsey*, for a depredation, in taking away and detaining their Merchandize and Goods, to the value of many thousands of pounds, out of a Ship wracked by tempest near that Isle, by which the Commissioners were impowr'd to *punish the offenders, and to make restitution satisfaction for the damages.*

Pat. de An. 6.  
H. 5. pars. 1.  
M. 9. Dorso.  
De ceteris personis arrest. & capiend.

The like complaint was made by the Merchants of the Duke of *Britain*, of certain depredations committed by the Subjects of the King of *England*, who issued forth the like Commission, and to give them reparation and damages for the same; so that if the Subjects of the King of *England* have had their Goods by way of Reprise for the satisfaction of such debt or damage, they may have the benefit of the like Commissions, to lick themselves whole out of the estates of the offenders.

# CHAP. III.

## Of Privateers or Capers.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of Privateers, whether allowable by the Laws of Nature.</p> <p>II. Of permission of such by the Laws of Nations.</p> <p>III. The occasion of their first Institution.</p> <p>IV. Whether it be lawful to undertake such an Employment.</p> <p>V. Of Commissions generall to endamage an Enemy.</p> <p>VI. Of Commissions special and to Privateers, and the immunities they claim by the same.</p> <p>VII. Of the care that obliged on the issuing forth such Commissions.</p> <p>VIII. Of provisions made as in reference to their regulating, and especially the last Treaty Marine between England and Holland.</p> | <p>IX. Of Goods subject to prise, how considered in reference to adjudication general.</p> <p>X. Of the Goods considered in reference to adjudication, on occasions special.</p> <p>XI. Of the lading made prise, whether it draws in a forfeiture of the Vessel, and where otherwise.</p> <p>XII. Whether Ships refusing to yield up to such, life is engaged.</p> <p>XIII. Privateers where subject to punishment, and their actions occasion a forfeiture of their Vessel.</p> <p>XIV. Of things not subject to spoil.</p> <p>XV. Considerations general on Privateers.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

1. **N**aturally every one may vindicate his own right, therefore were our hands given us: but to profit another in what we can, is not only lawful, but commendable; since nothing is more servicerble to Man, than Man: now there are divers obligations between Men, which engage them to mutual aid; for Kinsmen assemble and bring help, and Neighbors are call'd upon, and fellow Citizens; for it behoves every one either to take armes for himself, if he hath receiv'd injury, or for his Kindred, or for his Benefactors, or to help his fellows, if they be wrong'd: And Solon taught, that Common-wealths would be happy, wherein every one would think anothers injuries to be his own. But when War is denounc't, it matters not what obligations are wanting, it is enough the Nation is injur'd in general; for in that every individual is wrong'd, and all participate in the indignities and public damages of his Country; to revenge or prevent which, is the duty of every member of the same.

*Leg. servus D.  
de Serv. export  
DD. ad Leg.  
si quis in servi-  
tutem. D. de  
sur. Leg. prohib.  
c. de Jure  
Hisci.*

*Bartol. in Leg.  
ut vim. D. de  
just & Jure n.  
7. & 8.*

II. Since



## Of Privateers.

Cicero Offic. 3.

II. Since therefore it is not against the *Law of nature* to spoil him, whom it is lawful to kill, no wonder that the Laws of Nations permitted the Goods and Ships of enemies to be spoiled, when it suffered their Persons to be slain.

III. The approbation of which in the Wars of later Ages, hath given occasion to Princes to issue forth Commissions to endamage the enemy in their Commerce, and to prevent such supplies as might strengthen or lengthen out War, to persons to whom the prize or caption become absolute the Captors, and that to prevent the spare of Ships of force to be absent from their respective Squadrons or Fleets.

The Son of *Cato Censorius*, having served as a private Soldier of pay under *Pompeilius*, the Legion being disbanded, the Young Man was resolved to remain with the Army, though but a Volunteer; *Cato* wrote to *Pompeilius* the General, that he should give

him an Oath the second time; giving this reason, *Quia priore amisso, jure cum hostibus pugnare non poterat*: Cicero sets down the very words of *Cato* to his Son, whereby he admonisheth him not to enter into Battle; *Neque enim jus esse qui miles non sit pugnare cum hoste*, Cic. Offic. 1.

IV. By the Laws of Nations (as hath been said) it is lawful for every Subject of that Nation in War, to seize upon the enemies Goods and Ships, as also to kill them; for they are after War denounc't by Law, lookt upon as of no account, and if respect be had to natural and internal right, it seems granted to every one in a just War, to do those things, which he is confident within the just measure of warring, be advantageous to the innocent party; but though there may be such authority given, yet what tittle can they claim or appropriate to themselves of the Ships or Goods of enemies (for surely there is nothing owing to such, nor are they lawfully call'd to the same;) unless they can shrowd themselves under the protection of what they do, is only to exact punishment from the enemy, by the Common right of Men.

V. Commissions to kill or spoil the enemy, are in two respects; either General or Special: General as in a tumult;

## Of Privateers.

27

mult; among the Romans, the Consul said, *Whosoever would have the Common-wealth safe, let him follow me*; and to all particular Subjects is sometimes granted a right of killing in self-defence, when it is publicly expedient, as on a sudden occasion, and the like.

VI. Special Commissions, be such as are granted to those that take pay, and are under Orders; the not obeying of which may be punished with death, though the act succeeds well.

*Lig. Deserto-  
rem. D. de rei  
milit.*

Others to repair a particular damage by way of *Reprise*, the original damage being turn'd into a National debt, but that satisfy'd the other determines, or else to those who receive no pay, but go to War at their own charge; and that which is more, administer at their own costs a part of the War, by providing Ships of force, and all other military provisions to endamage the enemy or their Confederates, the which are termed *Privateers, &c.* as above, to whom instead of pay is granted leave to keep what they can take from the enemy; and though such Licence is granted them, yet may they not convert of their own head to their private use those prises, before the same have been by Law adjudged lawful to the Captors, and the Admiral had his share.

*C. Quando li-  
ceat uniuersis,  
Leg. 1 & 2.*

VII. Nor may such Privateers attempt any thing against the Laws of Nations, as to assault or endamage an enemy in the Port or Heaven, under the protection of any Prince or Republick, be he Friend, Ally or Neuter, for the peace of such Places must be kept inviolably.

Sir *Kenelme Digby* having obtain'd a Commission against the French, who being in the *Streights*, was every where honoured as a *Cavalier* whom the King of *Great Britain* favoured; in his Voyage he took some prises and coming to *Algier*, redeemed several Captives, whom he took aboard, and placed in the several Vessels he had made prise of, the which he so effected, that in a short time he became *Illustrissimo* of six Ships of War; coming to *Cape Congare*, ten leagues from *Scanderosne*, and having sent a Boat to descry the road, word being brought that there were in the road two *Venetian Galeasses*, with two other Galeons, two *English* Ships, and several *French* Ships;

This matter was highly debated at the Council board on the complaint that of Landy then Ambassador for that Republique, at London an. 1629. Vide Hist. Republic. Venet. fo. 170.

Ships; Sir *Kenelme* being satisfy'd of the prise, resolved to attaque them the next Morning, although the Admiral of the *Venetians* having declared himself protector of the *French*, and that he would destroy all the *English* Ships of War that he should meet, either in that *Republick* or *Grand-Seigniors* Seas. Sir *Kenelme* notwithstanding, resolv'd to engage them; and accordingly bore up to them, and the *Venetian* General weighed anchor to meet him; Sir *Kenelme* before he fired, sent a *Satty*, to inform the *Venetian* of his Quality, and of his Commission, being only to endeavour to make prise of the *French*, and giving him all the assurance possible of his friendship and respect to the Republique; but before the *Satty* was answer'd, the engagement was begun by the *English*, *French* and *Venetian*: This action of Sir *Kenelme Digby*, was question'd by the *Turk*; for that hostility had been committed by the *English* in the *Grand-Seignior* road, and thereupon the *Bassa* of *Alleppo*, and *Cady* of *Scanderoone*, made an *Avenia* or *Embargoe* on the *English* Merchants, till reparation was made, for the breaking the peace of the Port.

Treaty Marine at Lond. 1. of Decemb. 1674. In the Commission must always be mentioned that they have given such security.

VIII. In the granting of such private Commissions, there is alwaies great care to be had and taken by caution, to preserve the leagues of our Allies, Neuters and Friends, according to their various and several Treaties; and therefore at this day by the late Treaty between His Majesty and the *States of Holland* at *London*, before any *Privateer* or *Caper* can receive Commission, the Commander is obliged to enter before a competent Judge, good and sufficient security by able and responsible Men, who have no part or interest in such Ship, in 1500 *l. Sterling*, or 15500 *Gilders*; and when they have above one hundred and fifty Men, then in 3000 *l.* or 33000 *Gilders*, that they will give full satisfaction for any dammage or injuries, which they shall commit in their courses at Sea contrary to that Treaty, or any other Treaty made between His Majesty and that *State*, and upon pain of Revocation and annullity of their Commissions; and for answering of such dammage or injuries; as they shall do, the Ship is made lyable.

IX. If a Suit be commenced between the *Captor* of a *Prise* and the *Claimer*, and there is a Sentence or a Decree

Decree given for the party reclaiming; such Sentence or Decree (upon security given) shall be put in execution, notwithstanding the appeal made by him that took the prise, which shall not be observed in case the Sentence shall be given against the Claimers; if torture, cruelty or barbarous usage happens after a caption to be done to the persons taken in the prise, the same shall *ipso facto* discharge such a prise, although she was lawful, and the Captains shall loose their Commissions, and both they and the offenders be subjected to punishment.

X. Such sort of instruments having made a caption of Ships bound for an enemy from Nations Neuter, or in amity with both the warring States; the lading in order to be made prise, is reduced to these 3 several heads.

First, those Goods that are fit to be used in War, under which are included Powder, Shot, Guns, Pikes, Swords, and all other instruments and provisions of armature fit to be used in the Feild or at Sea.

The second, are those things that may be used in time of War and out of War, as Money, Corn, Victuals, Ships, and the like.

And the last are those Goods, that are only fit for luxury and pleasure.

XI. The first are accounted prise without controversy; He is to be accounted an enemy, that supplies an enemy with things necessary for the War.

The second is to be governed according to the State and condition of the War; for if a Prince cannot well defend himself, or endamage the enemy, without intercepting of such things, necessity will then give a right to the condemnation: And so Queen Elizabeth did the *Hanſiaticque* Fleet taken; laden with Corn for Lisbon; upon consideration of the state of the War, the same became prise.

The last become free, according to that of Seneca; I will not help him to Money, to pay his Guards; but if he shall desire Marbles and Robes; such things hurt not others, only they minister to his luxury: Souldiers and Armes I will not supply him with; if he shall seek for Players and recreations

condemnation, except carry'd to Places besieged. Art. 4. See John Mearnsius his Danish History concerning the Prohibiting of Goods by those Northern State. *Vide postea*, the Grand prise condemned by Queen Elizabeth in tit. Customs.

Art. 13. These Articles for their excellency are fit to be a Standard to all the Nations of Europe.  
Art. 14.

*In hostium esse partibus, qui ad bellum necessaria belli administrant. Consulatus Maris editus est Lingua Italica, in quem relata sunt constitutiones Imperatorum Græcie &c. cujus libris tit. 276.*

*Camden an. 1791. by the fourth Article at the Treaty at Lond. 1674, those Goods that may be used out of war as in war, (except Ships) may not upon any account be call'd prohibited, nor subject to a*



to soften his fierceness, I will gladly <sup>give</sup> to him: Ships of War I would not send him, but such <sup>as are</sup> for pleasure and ostentation of Princes sporting in the Sea, I will not deny.

And Persons XII. If a Privateer take a Ship laden wholly with counterband Goods, both Ships and Goods may be subjected, and made prize. <sup>But if the same be done by necessity of obedience, though the parties are much to be blamed, yet are they not to be punished; and so it was with those which relieved Sir John Old-Castle, with provisions, being taken, were discharged.</sup>

By the 7. Article in the Treaty at London, if the Skipper will deliver out the prohibited Goods, the Ship may proceed with the rest in their Voyage or course, as they please, and the Ship shall not be brought into Port.

If part of the lading are prohibited, and the other part are merely luxurious and for pleasure, only the Goods prohibited become prize, and the Ships and the remainder become free, and not subject to infection.

Ship may proceed with the rest in their Voyage or course, as they please, and the Ship shall not be brought into Port.

*Nec reus est mortis aliene, inquit Augustinus, qui sui possessioni murorum ambitum circumdedit: si aliquis ex ipsorum usu percussus intereat. Publ. Epist. 14.*

XIII. If such Ships shall be attacked in order to an examination, and shall refuse, they may be assaulted, like a house supposed to have Theeves or Pyrats in it, refuses to yeild up their Persons, may be broke up by the Officer, and the Persons resisters may be slain.

*Leg. 9. de Navi. lib. 2. Trin. 3. f. 30. in B. R. Rol. 9. p. 30. Abridg. f. 30.*

XIV. But if any of these Privateers wilfully commit any spoil, depredations or any other injuries, either on the Ships of our Friends or Neuters, or on the Ships or Goods of our own Subjects, they will notwithstanding they are not in pay, be subjected in some cases to death and other punishments, according to the demerits of their crimes, and perhaps may subject their Vessel to forfeiture.

And though by the Law of Nature the Goods of enemies are to be spoiled as well as their Persons slain, yet some Goods and things seem exempted, and ought not to be spoiled, and therefore it is not lawful to land on the territories of our enemies to spoil places dedicated to God: though

though Pomponius observes, when Places are taken by the enemy, all things cease to be Sacred, the reason given is, because the things which are call'd sacred, yet are they not indeed exempted from humane uses, but are publicque. The Townsmen, saith Tacitus, opening their gates, submitted themselves and all they had to the Romanes, themselves, were spared, the Town was fired, Pompey entered the Temple by the right of Victory, not as a suppliant, but as a Conqueror: and though that priviledge may seem right by the Law of War to a Sovereign, or a General, that intends a Conquest, yet that power may not seem devolved to him, whose Commision is cautionally to endamage the enemy only, as in reference to his commerce and provisions of enabling them to withstand the War: Certainly, that conquest is poor, whose Trophies and Triumphs are made up with Roofs, Pillars, Posts, Pulpits and Pews, and the spoil of Agriculture. Hence it is that at this day, the King of France in Germany and Holland, accepts of Contributions, by which the Cities and Churches are not only spared; but even the Country-men plough and sow as quietly as if there were no Armies in their Territories at all.

Pompon. Leg. cum loca D. de Religiosis. Tacitus Anal.

Wars and Victories most part consist in taking and overthrowing Cities, which work is not done without injury of the Gods, the walls of Cities and Temples of the Gods partake in the same ruin, the Citizens and Priests equally slaughtered; nor is the rapine of sacred riches and prophane un-

like: so many are the sacriledges of the Romans as their Trophies, so many are their Triumphes over Gods and Nations: and then goes further, *Tot manubie quot manent adhuc simulacra captivorum deorum. Mox & bene, quod si quid adversi Urbibus accidit, eadem clades Templorum que & mœnium fuerant.*

Even upon the same reason, that the instruments of Husband-men are not to be taken for a pledge by the Civil nor Common Law. *Leg. extant, C. que res pign.* Coke sup. Littleton 47.

X V. Most certain, those sorts of Capers or Privateers, being Instruments found out but of latter Ages, and its well known by whom it were well they were restrained by consent of all Princes; since all good Men account them, but one remove from a Pyrat who without any respect to the cause, or having any injury done them, or so much as hired for the service spoil Men and Goods, making even a trade and calling of it, a midst the calamities of a War. and driving a commerce and mart with the spoil, and that with as much peace and content, as if they had never heard of tears, blood, wounds or death, or any such thing: such to expose their lives against Ships of the like kind, were both honourable and just, or those that

that should aid the enemy with Goods prohibited as afore;  
such prizes were possessions most noble; but the Goods,  
Ships and lives of the innocent peaceable traders to be  
exposed to rapine and spoil, renders them worse then  
the *Roman* Lictors, by how much 'tis to kill without cause,  
Heads Men executing the guilty, they the guiltless.

It was a high necessity that enforced the *English* to  
commissionate such, the number of her then enemies,  
covering the Sea, like the *Aegyptian* locusts; it were well  
they were rejected by consent, or if allow'd off, not sub-  
ject to Quarter, when taken by Ships of War: A trade  
that *St. Paul* never heard of, when he said, *Who goeth  
to War at his own charge?*

*E. Cor. 9. 7.*

---

CHAP.

---

# CHAP. IV.

## Of Pyracy.

- I. Pyrats what?
- II. Of the duty incumbent on Princes and States, as in reference to such, and whether lyable for the damages they commit.
- III. Pyrats where they hold a society, how the is same esteemed in Law, and of equality held by them.
- IV. Where such may obtain the right of legation.
- V. Ships where lyable for the redemption of the Master, who remains as a pledge for the freedom of the Ship and lading, and where not.
- VI. An oath given for the discharge of a Ship from Pyrats to pay them a summe, whether the same ought to be performed.
- VII. Forraigners spoiled by English Pyrats may pursue for Justice, within the Stat. of 28 H. 8.
- VIII. Where the subjects of a Forraign Nation committing Pyracy may be punished for the same. and,
- IX. Pyracy committed by the subjects of a Nation in enmity with the Crown of England, whether the same is Pyracy, or otherwise punishable.
- X. Pyracy committed in the British Seas, properly punishable by the Crown of England, and not otherwise.
- XI. Pyracy committed on the Ocean where the Pyrats may be executed by the Laws of Nature.
- XII. Pyrats overcome in the attempt, where the Captors may execute them without any Tryall or Judgements.
- XIII. Pyrats attempting, to rob commit a murder, whether all are principal, or only the slayer, and the rest accessories.
- XIV. If the subjects of one Forraign Nation rob another, and bring the booty into England, whether the party injured may proceed Criminaliter for punishment, and Civiliter for restitution.
- XV. Pyrat takes only Men; and no part of the lading, whether the same be Pyracy.
- XVI. Where a Master may commit Pyracy of those things that are committed to his charge, and where otherwise.
- XVII. Where Pyracy may be, though there be nothing taken; and where Goods are taken out of a Ship, and no body in it.
- XVIII. The Captain and Crew of a Vessel, that have a Commission of reprisé commit Pyracy, whether he that procured the same and employed them, ought to answer the damage.
- XIX. Of Goods taken and retaken by a Friend, whether the property of the prise is altered.
- XX. Of Restitution made of Goods taken and retaken from a Pyrat, by the Law Maritime.
- XXI. Of Restitution frustrated by the Common Law.
- XXII. Of Pyracy as in reference to matters criminal, and how punishable this day by the Laws in England.
- XXIII. How the Stat. of 28 H. 8. operates, as in reference to Pyracies.
- XXIV. Whether depredation in Ports



Ports within the Realm, remains Robbery at the Common Law, or Piracy by the Law Maritime.

XXV. Where benefit of Clergy is allowable to Pyrats, and where not; and whether by the pardon of all felonies, Piracy is included.

XXVI. Whether attainder for Piracy works a corruption of Blood, and forfeiture of Lands.

XXVII. Goods taken at Sea and

brought to Land, the parties may be indicted upon the Stat. of 28 H.8. cap. 15.

XXVIII. where the Admiralty claiming with an original or a concurrent Jurisdiction, the Common Law will not intermeddle.

XXIX. How satisfaction of old was repaired to persons robbed, and how the offenders were punished.

I. **A** Pyrat is a Sea Thief, or *Hostis humani generis*, who for to enrich himself, either by surprise or open force, sets upon Merchants and others trading by Sea, ever spoiling their lading, if by any possibility they can get the mastery, sometimes bereaving them of their lives, and sinking of their Ships; the actors wherein Tully calls Enemies to all, with whom neither Faith nor Oath is to be kept.

II. By the Laws of Nature Princes and States are responsible for their neglect, if they do not provide Ships of War and other remedies for the restraining of these sort of Robbers; but how far they are bound either by the Civil Law or Common Law of this Kingdom, may be some question: for it is agreed they are not the cause of the unjust spoil that is committed by them, nor do they partake in any part of the plunder; but if a Prince or State should send forth Ships of War or Commissions for reprisal, and those instead of taking prizes from the Enemy, turn Pyrats, and spoil the subjects of other Friends; there has been some doubt, whether they ought not to make satisfaction to the parties injured; in case the offenders should prove unable: surely there is no more reason for this latter than the first; for seeing Princes and States may give all their subjects power to spoil the Enemy; nor is such a Permission any cause why damage was done to our Friends, when even private Men without any such Permission, might send forth Ships of War; besides it is impossible that Princes or States should foresee, whether they would prove such or not; nor can it be avoided, but we must imploy such, otherwise no commissions to prevent the same, if possible. They are generally restrained by Proclamation when a War breaks forth, and commanded, that none presume to set forth, without a Commission.

If the offenders could be found, they ought to be yielded up to Justice; and if they have any Estate, the same ought to go towards the reparation of the damage.

Caution is commonly taken upon the giving forth of such Commis-

sions to prevent the same, if possible. They are generally restrained by Proclamation when a War breaks forth, and commanded, that none presume to set forth, without a Commission.

Army

Army or Fleet could be prepared; neither are Kings to be accused if their Souldiers or Mariners wrong their Confederates, contrary to their commands, though they are obliged to punish and yeild up the offenders, and to see that legal reparation be made out of the Estate of the Pyrats: If Letters of Marque or Reprizal be granted out to a Merchant, and he furnishes out a Ship with a Captain and Mariners, and they instead of taking the Goods or Ships of that Nation against whom their Commission is awarded, take the Ship and Goods of a Friend, this is Pyracv; and if the Ships arrive in \* England, or in any other of His Majesties Dominions, the same shall be seized, and the owners for ever loose their Vessel. †

Constit. Gallie  
tom. 3. tit. 3.  
constitutione  
Anni 1583.  
cap. 44. Vide  
etiam tom. con-  
stitut. 3. tit.  
2. constit. Anni  
1541. cap. 44.  
Vide 21. Art.  
at the Treaty  
at Breda be-  
tween England  
and Holland.  
and the 15.  
Article in the  
Marine Treaty

at Lond. 1674. † Trin. 7. Jac. in B. R. Rolls f. 530. Vide Sir Francis Moores Re-  
ports, i Jac. Waltham versus Mulgar

From hence it is, that Princes and States are very cautious upon this we call *Jure Belli privati*, how they engage themselves, or those who seek reparation for wrongs before received; for the person injured governs not the action, but devolves the power to some other hired for that particular use, whose Law is no more then this, *There is most right where is most pay or prize*: Unhappy state of Man, whose support and living is maintained only by exposing himself to death, a Calling that nothing can make it honest, but the highest necessity or pious charity. And therefore those that issue forth such sort of Commissions, generally take caution for their returning within a convenient time, and not to wander in that unhappy condition.

III. Though Pyrats are called enemies, yet are they not properly so termed: For he is an enemy, saies Cicero, who hath a Common-wealth, a Court, a Treasury, consent and concord of Citizens, and some way, if occasion be of Peace and League; and therefore a Company of Pyrats or Freebooters are not a Common-wealth, though perhaps they may keep a kind of equality among themselves, without which no Company is able to consist; and though it is seldom they are without fault, yet hold society to maintain right, and they do right to others, if not in all things according to the Law of Nature (which among

Leg. Hostes de  
verb. signif.

Leg. Hostis de  
Captivis.

many people is in part obliterated ) at least according to *agreements* made with many other Nations; or according to Custom: So the *Greeks* at what time it was accounted lawful to take spoil at Sea, abstained from slaughter, and populations, and from stealing Oxen that plowed, as the *Scholiast* upon *Thucydides* observes, and other Nations living also upon the spoil when they were come home from Sea, sent unto the Owners to redeem (if they pleased at an equal rate) what they were robbed of at Sea, and at this day, if a Ship hath the Emperor of *Barbarys* protection, the Pyrats of that Nation ( if they seize ) will restore, and if there be no protection, yet if taken within sight of their Castles, the Prize is not absolute; but if resistance is made, and there be a Caption, she then becomes the Captors for ever; *as the price of blood.*

*Tacitus Annal.*  
3. *C. far lib. 3.*  
*de Bello Civ.*

*Hist. Republ.*  
*Venice f. 91.*

*ff. ad Legem*  
*Rhod. de iactu.*  
l. 2. §. si navis  
a Pyratibus re-  
dempta.

I V. Pyrats and Robbers that make not a Society, *i. e.* such a Society as the Laws of Nations accounts lawful, are not to have any succour by the Law of Nations. *Tiberius*, when *Tacfarinas* had sent Legates to him, he was displeased that both a Traytor and a Pyrat should use the manner of an Enemy, as *Tacitus* hath it; yet sometimes such Men (Faith being given them,) obtain the right of Legation as the Fugitives in the *Pyrenean* Forrest, and the *Banditi* at *Naples*, and *Solyman* the Magnificent, having entertained *Barbarossa* the famous Pyrat, sent word to the *Venetians*, that they should use him and esteem him no more as a Pyrat, but one of their own Port.

V. If a Ship is assaulted by a Pyrat, for redemption of which the Master becomes a Slave to the Captors, by the Law Maritime the Ship and lading are tacitly obliged for his redemption, by a general contribution.

But if a Pyrat shall feign himself stronded, and to duc-coy the Merchant Man for his releif, shall fire his Guns, or wave his Colours, who accordingly varies his course for his assistance, and the Pyrat enters him, for redemption of which he becomes a Slave to the Pyrat, there contribution shall not be made, and if the Ship loses any of her lading, the Master shall answer the same.

VI. A Pyrat attacques a Merchant Man, and enters her, for Redemption of which the Master gives his Oath, at a time and place to pay the Pyrat a summe certain; by some it hath been held, that the Master commits not perjury,

perjury, if the price promised for redemption be not brought according to the Oath; because that a Pyrat is not a determinate, but a common Enemy of all, with whom neither Faith nor Oath is to be kept, but that is no reason for the assailing of the vow: for though the Person be deficient, yet the Just God is concerned; nor can that Person that hath promised a thing, satisfy his conscience after he hath once delivered it to him, to recover it back again; for the words in an Oath, as to God, are to be understood most simply, and with effect; and therefore he that returned secretly to the Enemy, and again departed, made not good his Oath concerning his return.

*Leg. Bona fides. D. Expos.*

VII. If an *English Man* commit Pyracv, be it upon the Subject of any Prince or Republique in amity with the Crown of *England*, they are within the purview of the *Stat.* of 28 H. 8. and so it was held where one *Winterfon, Smith* and others had robbed a Ship of one *Matvine Gantier*, belonging to *Bordeaux*, and bound from thence with *French Wines* for *England*, and that the same was felony by the Law Maritime, and the Parties were convicted of the same.

On a Commission grounded on the *Stat.* awarded. *Rott. Admir. 28. Eliz. m. 23.*

VIII. And so it is if the Subject of any other Nation or Kingdom, being in amity with the King of *England*, commit Pyracv on the Ships or Goods of the *English*, the same is felony, and punishable by virtute of the *Stat.* and so it was adjudged, where one *Careless* Captain of a *French Man* of War of about 40 Tuns and divers others, did set upon four Merchant Men going from the Port of *Bristol* to *Carmarthen*, did rob them of about 1000 l. for which he and the rest were arraigned, and found guilty of the Pyracv.

*Rott. Adm. anno 28. Eliz. m. 24.*

But before the *Stat.* of 25 Ed. 3. if the Subjects of a Forreign Nation and some *English* had joyned together, and had committed Pyracv, it had been Treason in the *English*, and felony in the Forreigners: And so it was said by *Shard*, where a *Norman* being Commander of a Ship, had together with some *English* committed robberies on the Sea, being taken, were arraigned and found guilty; the *Norman* of felony, and the *English* of treason, who accordingly were drawn and hang'd,

*Normandy* was lost by King *John*, and out of the hegeance of the King of *England*, &c. they were as now accounted Aliens. 40. *Assise placet. 25 p. Shard. Vid. 2 H. 5 cap. 6.*



But now at this day they both receive Judgement as felons, by the Laws Maritime.

IX. If the Subjects in enmity with the Crown of *England* be Sailors aboard an *English* Pyrat with other *English*, and then a robbery is committed by them, and afterwards are taken, it is felony without controversy in the *English*, but not in the *Strangers*; for they cannot be tryed by virtue of the Commission upon the *Statut*, for it was no piracy in them, but the deprdeation of an *Enemy*, for which they shall receive a tryal by *Martial Law*, and Judgement accordingly.

Selden *Mare*  
claus. lib. 1.  
cap. 27 Case of  
Reginor Grim-  
bald in tempor.  
Ed. 1. Cited  
in 4 Inst f. 142.  
in c. of the Ad-  
miralty.

X. Piracy committed by the Subjects of the *French King* or of any other Prince or Republique, in amity with the Crown of *England* upon the *British Seas*, are punishable properly by the Crown of *England* only, for the Kings of the same have *istud regimen dominium exclusive*, of the Kings of *France*, and all other Princes and States whatsoever.

*Injicere ma-  
num parca tra-  
xerunt debitum  
sibi, & sermons  
usus est juris;  
nam manus in-  
jectio dicitur,  
quoties nulla  
judicis aucto-  
ritate, rem no-  
bis debitam  
windicamus.  
Servius 11.Æ-  
neidos.*

XI. If Piracy be committed on the *Ocean*, and the Pyrats in the attempt there happen to be overcome, the Captors are not obliged to bring them to any Port, but may oppose them immediately to punishment, by hanging them up at the main yard end before a departure; for the old natural liberty remains in places where are no judgements.

And therefore at this day, if a Ship shall be in on a Voyage to the *West-Indies*, or on a Discovery of those parts of the unknown World, and in her way be assaulted by a Pyrat, but in the attempt overcomes the Pyrat, by the Laws Maritime the Vessel is become the Captors; and they may execute such *Beasts of prey* immediately, without any solemnity of condemnation.

*Leg. extat. D.  
quod metus.*

XII. So likewise, if a Ship shall be assaulted by Pyrats, and in the attempt the Pyrats shall be overcome, if the Captors bring them to the next Port, and the Judge openly rejects the Tryal, or the Captors cannot wait for the Judge without certain peril and losse, Justice may be done upon them by the Law of Nature, and the same may be there executed by the Captors.

*Honorius &  
Theodosius: id-  
circo Judicio-  
rum vigor ju-  
risque publici  
tutela in medio constituta, ne quis quam sibi ipsi permittere valeat ultionem. Leg.  
nulli C. de Judeis,*

*Cajus Caesar* being but a Private Man, pursued the Pyrats, by whom he formerly had been taken and spoiled by them, and making up to them with such a Fleet as he possible in haste could get ready, attacked, burnt and destroyed their Ships, and the Men he brought back to an Anchor, where repairing to the *Proconsul*, to do Justice, who neglecting, himself returned back, and there hang'd them up. Plutarch. in Caesar.

XIII. If a Pyrat at Sea assault a Ship, but by force is prevented entering her, and in the attempt the Pyrat happens to slay a Person in the other Ship, they are all *principals* in such a murder, if the Common Law hath Jurisdiction of the cause: but by the Law Maritime, if the Parties are known, they who gave the wound only shall be *principals*, and the rest *accessories*; and where they have cognizance of the principal, the Courts at Common Law will send them their accessory, if he comes before them. Ralph Williams indicted for the murder of one John Terry, and Bridges, Black, and others, as accessory. Rott. Admir. 22 Eliz. M. 24. Tel. f. 134 135.

XIV. If a *Spaniard* robs a *French Man* on the High Sea, both their Princes being then in Amity, and they likewise with the King of England, and the Ship is brought into the Ports of the King of England, the *French Man* may proceed *criminaliter* against the *Spaniard* to punish him, and *civiliter* to have Restitution of his Vessel: but if the Vessel is carryed *intra Presidia* † of that Prince, by whose Subject the same was taken, there can be no proceeding *civiliter*, and doubted if *criminaliter*; but the *French Man* \* must resort into the Captor or Pyrats own Country, or where he carried the Ships, and there proceed. Res que intra Presidia perductæ nondum sunt, quanquam ab hostibus occupata, dominum non mutant ex Gentium jure. Grotius de Jure Belli ac Pacis cap. 9. §. 16. † Trin. 17 Car. in B.R. Marsh's Reports.

A *Dutch Man*, but Naturalized by the Duke of Savoy, and living at *Villa Franca* in his Dominions, procures a Commission from the States of Holland, and coming to *Leighorn*, there rid with the Colours and Ensigns of the Duke of Savoy, the Ship *Diamond* being then in Port, and having received her lading, was afterwards in her Voyage home surpris'd by that Caper, and brought into *Villa Franca*, and there condemned and sold to one *Poleman*, which Ship afterwards coming for England, the Plaintiffs having notice, made a seizure, and upon Tryal Adjudication passed for the Plaintiffs, the original proprietors: there was an Appeal to the Duke of York; but nothing came of it. \* Leg. Hostes & Leg. Latrones D. de Cap. Leg. postlim. a Pyratibus eod. Tit. The Caption was in 1665, 1 Adjudication passed 13 of May 1670, upon which Rott. Admir.

## Of Piracy.

for though the Ship of War and the Captors were of *Savoy*, and carryed thither; yet being taken by virtue of a *Dutch Commission*, by the *Law Maritime*, she must be carryed *infra Presidia* of that Prince or State by virtue of whose *Commission* she was taken.

Nor can such carrying of the Ensignes or Coultors, of the *Duke of Savoy*, who was then in amity with the Crown of *England*, or the *Commander*, though a Subject of that Prince, make him a *Pyrat*, or subject them or those to whom they have transferred their interest of the Prize any waies to be questioned for the same *criminaliter*; for that the original *quoad* as to the taking was lawful, <sup>a</sup> as one enemy might take from another, but *civiliter* the same, for that the Captor had not entitled himself to a firme possession. <sup>b</sup>

<sup>a</sup> Bullstroed. 3. part. fo. 28.  
Case of Samuel Pellag.

<sup>b</sup> Grotius de jure belli ac pacis lib. 3. cap. 9. §. 15, et 16.

<sup>c</sup> Mich. 8 Jac. in B.R. Brownlow 2. part. Westons C.

And therefore in all cases where a Ship is by *Letters of Marque* or *Piracy*, <sup>c</sup> if the same is not carry'd *infra presidia* of that Prince or State, by whose Subject the same was taken, the Owners are not divested of their property, but may re-seize wheresoever they meet with their Vessels.

XV. If a *Pyrat* attaques a Ship, and only takes away some of the Men, in order to the selling them for slaves, this is a *Piracy* by the *Law Maritime*; but if a Man takes away a *Villaine* or *Warde*, or any other Subject, and sells them for slaves; yet this no robbery by the *Common Law*;

XVI. If a *Bale* or *Pack* of Merchandise be delivered to a Master to carry over Sea to such a Port, and he goeth away with the whole *Pack* or *Bale* to another Port, and there sells and disposes of the same, <sup>\*</sup> the same is no felony.

*Co. 3. Inst. 109. lib. 8. f. 33. 6.* Caley's c. but Black Maile & such sorts of taking in Cumberland and Northumberland, and Westmorland was Felony. 43. Eliz. cap. 13. <sup>\*</sup> ff. *Nauta Caup.* l. 1. sect. 3. Stab.

*Glanvil. lib. 10. cap. 13.*

But if he opens the *Bale* or *Pack*, and take any thing out, *animo furandi*, the same may amount to such a *Larceny*,

ceny, as he may be indicted in the *Admiralty*, though 13. E. 4. 9:  
it amounts not to a Piracy.

Yet if such a Master of Ship shall carry the lading to the Port appointed, and after retakes the whole Pack or Bale back again, this may amount to a Piracy; for he being in the nature of a Common Carrier, the delivery had taken its effect, and the privity of the Balement is determined.

*Nauta Caup.*  
*Stat. lib. 5. c. 7.*  
*sect. receptit.*  
*Co. 3. Inst.*  
107, 108.

XVII. If a Pyrat shall attaque a Ship, and the Master for the redemption shall give his Oath to pay a sum certaine; though there be no taking, yet is the same Piracy, by the *Law Maritime*.

44. E. 3. 14.  
4. H. 4. 2.  
*S. ad Leg. Rhod.*  
*de jact. l. 2. §.*  
*si navis a Py-*  
*ratis redempta*  
*fit.*

If a Ship shall ride at Anchor, and the Mariners shall be part in their Ship-Boat, and the rest on the shore, and none shall be in the Ship, yet if a Pyrat shall attaque her and rob her, the same is Piracy.

14. E. 3. Cor.  
115.

XVIII. A Merchant procures Letters of *Marque* or *Reprise*, and then delivers the Commission to Persons to endeavour a satisfaction; if such Persons commit Piracy, the Vessel is forfeited without controversy: but the Merchant is no waies lyable to make satisfaction; for though the Superior shall answer for the actions of his Ministers or Servants, yet that is introduced by the Civil Law; but this question must be decided by the Laws of Nations, by virtue of which such *Commissions* are awarded or granted; the which does exempt any Man to answer for the damages of his Servants, unless he fore-knew that they would commit such a Piracy or spoliation, or any way have abetted or consented to the same, which right may be forfeited, and the Civil Law let in to acquire satisfaction.

*Trin. 7. Jac. in*  
*B. R. Rolls A-*  
*cridg. 530.*

*Constit. Gallie*  
*tom. 3. tit. 3.*  
*constit. anni*  
1583. c. 44.

*Vide Sir Fran-*  
*cis Moore Re-*  
*ports Waltham*  
*vers. Mulgar.*

But if a Ship shall be at Sea and in necessity, if she at-  
taques another Ship, and takes out some Victuals, Cables,  
Ropes, Anchors or Sailes, (especially if that other Ship  
may spare them) this is not Piracy; but then the party  
must pay ready Money for such things, or give a Note or  
Bill for the payment of the value, if on this side the  
*Straiter of Morocco*, within four months, if beyond, within  
twelve months.

*Leg. 2. sect.*  
*cum in eadem;*  
*D. ad l. Rhod.*  
*Leg. quo nau-*  
*frag. §. quod*  
*ait D. de in-*  
*cen. Leg. quem-*  
*admodum, sect.*  
*item. D. ad*

*Leg. Aquiliam. 27. H. 8. cap. 4.*

But



*Per Leg. Pom-  
ponus de acqu.  
xii dom.*

XIX. By the *Law Maritime*, if Goods are taken by a *Pyrat*, and afterwards the *Pyrat* attacks another Ship, but in the attempt is conquered, the *Prise* becomes absolute the *Captor's*, saving the account to be rendred to the *Admiral*. And it is accounted in *Law* a just caption of whatsoever may be got, or taken from such *Beasts of prey*, be the same in their own or in their Successors possession.

*Per Leg. Mu-  
lier ea. cap. 6.  
post.*

But then an account ought to be rendred to the *Admiral*, who may (if they happen to be the Goods of the Fellow Subject of the Captors, or of Nations in Amity with his own Sovereign) make restitution to the Owner, the costs and charges, and what other things in equity shall be decreed to the *Captor*, first considered and deducted.

27 E. 3. c. 13.

XX. By the *Status* of 27 *Edw. 3. cap. 13.* if a Merchant loose his Goods at Sea by *Piracy*, or *Tempest* (not being wrackt) and they afterwards come to Land; if he can make proof they are his Goods, they shall be restored to him in places *Guildable*, by the King's Officers and six Men of the Country; and in other places by the Lords there and their Officers, and six Men of the Country.

*Sigonius de  
Jure Romi l. 1.  
cap. 11.*

This Law hath a very near relation to that of the *Romans*, called *De Usu-Captione*, or the *Atinian Law*; for *Atinius* enacted, that the Plea of Prescription or long possession, should not avail in things that had been stoln, but the interest which the right Owners had should remain perpetual; the words of the Law are these, *Quod surreptum est, ejus rei eternitas auctoritas esset*, where by *Auctoritas* is meant *Jus Dominii*.

*Mich. 13. Jac.  
in B. R. Sir Ri-  
chard Bingley's  
Case. Roll's  
Abridgement  
l. 530r*

XXI. Yet by the *Common Law* of *England*, it has been held, that if a Man commit *Piracy* upon the Subjects of another Prince or Republique (though in League with us) and brings the Goods into *England*, and sells them in a Market *Overt*; the same shall bind, and the Owners are for ever concluded, and if they should go about in the *Admiralty* to question the property, in order to restitution, they will be prohibited.

XXII. This offence was not punishable by the *Common Law*, as appears by the preamble of the *Stat. of 28. H. 8 cap. 15.* but the same was determined and judged by the *Admiral*, after the course of the *Civil Law*; but by force of the said *Act*, the same is enquired of, heard and deter-

determined according to the course of the *Common Law*, as if the offence had been committed on *Land*.

XXIII. This Act does not alter the offence, or make the offence Felony; but leaves the offence as it was before this Act; viz. Felony only by the *Civil Law*, but giveth a mean of Tryall by the *Common Law*, and inflecteth paines of death, as if they had been attainted of any felony done upon the *Land*.

The Indictment must mention the same to be done upon the *Sea*.

A Pardon of all Felonies does not extend to this offence, but the same ought especially to be named. *Moore 756.*

Though there be a forfeiture of Lands and Goods, yet there is no corruption of Blood.

There can be no Accessory of this offence, tryed by virtue of this Statute; but if there be an Accessory upon the *Sea* to a Piracy, he must be tryed by the *Civil Law*.

The Statute of 35 H. 8. cap. 2. taketh not away this Statute for Treasons done upon the *Sea*, Clergy is not allowable to the party on the Statute 28 H. 8. vide 14. Jac. in B. R. *Moore 756. placet 1044.*

Though a Port is *Locus publicus uti pars Oceani*, yet it hath been resolved more then once that all Ports, not only the Town, but the Water is *infra corpus Comitatus*.

If a Pyrat enters into a Port or Haven of this Kingdom, and a Merchant being at Anchor there, the Pyrat assaults him and robs him, this is not Piracy, because the same is not done *super altum Mare*; but this is a down-right robbery at the *Common Law*, for that the Act is *infra corpus Comitatus*, and was inquirable and punishable by the *Common Law*, before the Statute of 28 H. 6. cap. 15. London; and they were indicted for it at the *Common Law*, and were found guilty of the same. *Anno 23. Car. 2.*

XXV. So If such a Piracy be made in a Creek or Port, in such cases it has been conceived, that Clergy is allowable upon the Stat. of 28 H. 8. but if it be done *super altum Mare*, there no Clergy is allowable: by the Pardon of all Felonies, at the *Common Law*, or by the Statute Law; Felony *super altum Mare* is not pardoned; for though

But if the party be attainted before the Admiral, and not before the Commissioners, then there is no corruption of Blood or forfeiture of Lands; quod nota Ca. Inst. 389.

Hyde and others robbed the Ship of Captain Slue of the Merchandize of one Mr. Mors; a Merchant in

*Lyonell Jenkins*, and the rest of the Lords the Judges, upon the Piracy committed by *Cusack* and others, and denyed; and he was afterwards executed *Anno 1674. vide 19. E. 3. Cor. 124. 9. H. 4. 2.*

the

the King may pardon this offence, yet being no Felony in the eye of the Law of this Realm, but only by the *Civil Law*, the Pardon of all Felonies generally extends not to it; for this is a special offence, and ought especially to be mentioned.

9. E. 4. 28. cited in Cokes  
3. Inst. fo. 112. XXVI. A Man attainted by virtue of that Statute, forfeits his Lands and Goods, yet there works *no corruption* of Blood, by virtue of that attainder; nor can there be any Accessory of PyracY by the Law of this Realm: but if it falls out that there is an Accessory upon the Sea, such Accessory may be punished by the Civil Law, before the Lord *Admiral*, but he cannot be punished by virtue of this Act, because it extends not to Accessories, nor makes the offence felony.

28. Eliz. But-  
lers Case cited  
3. Inst. fo. 113. XXVII. If one steals Goods in one County, and brings them into another, the Party may be indicted in either County; but if one commits PyracY at Sea, and brings the Goods into a County in *England*, yet he cannot be indicted upon that Statute, for that the originall taking was not felony, whereof the *Common Law* took conuizance.

Marsh's Case  
13 Jac. in B.R.  
3 Bullstrode fo.  
27. XXVIII. If a Man is taken on suspicion of PyracY, and a Bill is preferred against him, and the *Jury* find *Ignoramus*; if the Court of *Admiralty* will not discharge him, the Court of *Kings Bench* will grant a *Habeas Corpus*, and if there be good cause discharge him, or at least take Bayle for him: But if the Court suspects that the Party is guilty, perhaps they may remand him; and therefore in all cases, where the *Admiralty* legally have an original or a concurrent Jurisdiction, the Courts above will be well informed before they will meddle.

\* Yelverton  
134, 135. Scad-  
dings Case,  
Tench versus  
Harrison B. R.  
Style's 171,  
340.  
† 50. E. 3. par.  
2. Dors. 24. de  
audiendum &  
terminandum  
Mercatoribus  
super mare de  
predatis. If a Man be in custody for PyracY, if any aids or assists him in his escape, though that matter is an offence at Land, \* yet the *Admiralty* having Jurisdiction to punish the principal, may have likewise power to punish such an offender, who is lookt upon *quasi* an Accessory to the PyracY; but to rescue a Prisoner from an Officer of theirs, they may examine the cause, but they cannot proceed criminally against the offender.

XXIX. † Antiently when any Merchants were robbed at Sea, or spoiled of their Goods, the King usually issued out *Commissions* under the *Great-Seal of England*, to enquire

enquire of ſuch depra-  
dations and robberies, and to puniſh  
the Parties; and for fraudes in Contracts, to give dam-  
nages to the Parties, and proceed therein *ſecundum Le-*  
*gem & conſuetudinem Angliæ, ſecundum Legem Mercatoriam,*  
*& Legem Maritimam*; all three Laws included in the  
*Commiſſions.*

*Pat. 6. E. 1.  
m. 24. Dorſ. the  
Caſe of Will.  
de Dunſtable  
a Citizen of  
Winton.*

*Pat. 31. E. 1.  
m. 4. Dorſ. pro  
willielmo Perin  
& Domingo  
Perez Mercato-  
ribus.*

One *Maſh* a Fiſherman being at Sea, was taken by  
Pyrats, and all which he had; after that, the Pyrats took  
another Ship belonging to the *Dane*, and the Pyrats having  
riſſed the Ship, and taken the beſt of the Goods of the  
*Danes*, the Pyrat put aboard the Fiſherman, and ſo  
ſuffered him to depart, who landing here, went imme-  
diately to Dr. *Talbot*, a Civilian, and ſhewed him all this  
matter, and deſiring his advice, who directed an In-  
ventory to be made of the *Danes* Goods in his Ship; the  
*Dane* afterwards coming into *England*, and having in-  
telligence of the matter, proſecuted the Fiſherman in  
the *Admiralty*; and although *Ignoramus* was found, yet  
they there detained him; upon which a *Habeas corpus* was  
prayed, but denied by My Lord *Coke* Chief Juſtice, for  
no other reaſon but becauſe the truth of the matter was  
opened, which gave the Court cauſe to ſuſpect him of  
Pyracy; otherwiſe if he had moved barely upon the *Ignoramus*  
found, *quod nota Paſch. 13 Jac. in B. R. the King verſ.*  
*Maſh Buſtrod 3. part. fo. 27.*

---

CHAP.

---



## CHAP. V.

## The Right of the Flagg, as to the acknowledging the Dominion of the British Seas.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Considerations general as in reference to the same.</p> <p>II. Whether Princes may have an exclusive property in the Sea.</p> <p>III. That such an exclusive Dominion may be, and proved.</p> <p>IV. Of the Sea, whether capable of Division, as the Land general.</p> <p>V. Considerations general as in reference to Maritime Cities touching Sea Dominion.</p> <p>VI. Of the Sea, by reason of its instability, whether capable of subjection.</p> <p>VII. Of the Dominion of the British Sea asserted long before, and ever since the Conquest of this Isle by the Romanes.</p> <p>VIII. The duty of the Flagg, but a consecutive acknowledgement</p> | <p>of that right, and of the Ordinance of Hastings declaring that Customary obedience.</p> <p>IX. Considerations had on some Treaties, in reference to the asserting the duty of the Flagg.</p> <p>X. Of the extent how far that duty is required and payable.</p> <p>XI. Of the duty of the Flagg, not a bare Honourary salute, but a Right.</p> <p>XII. Of the importance and value of the same as well in Nations Forraign, as in England.</p> <p>XIII. Of the duty of the Flagg not regarded as a civility, but commanded as a duty.</p> <p>XIV. Of the importance of that acknowledgement.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **A**fter the Writings of the *Illustrious Selden*, certainly it's impossible to find any *Prince* or *Republique*, or single Person indued with reason or sence, that doubts the *Dominion* of the *British Sea*, to be intirely subject to that *Imperial Diadem*, or the duty or right of the *Flagg*, which indeed is but a consecutive acknowledgment of that antient *Superiority*: yet there has not been wanting some, who though they have not questioned the former, have highly disputed the latter:

But there are some fatal periods amongst our *Northern Regions*, when the *Inhabitants* do become so brutal and prejudicate, that no obligation of Reason, Prudence, Conscience or Religion can prevail over their passions, especially if they become the devoted *mercenaries* of an implacable *Faction*; in opposition to all that can be called either just or honourable, we need not reap up the carriage

riage of that late insolent Son of a *Tallow Chandler*, whose deportments made him no less insupportable at Home, then he was amongst *Forreign Princes*; the testimonies of his greatest parts and abilities, being no other then monuments of his *malice* and hatred to this Nation, and records of his own *folly*: But Princes are not to be wrangled out of their antient *Rights and Regalities* by the subtil argument of *Wis* and *Sophistry*; nor are they to be supplanted or overthrown by malice or Arms, so long as God and Good Men will assist, in which His Sacred Majesty did not want, when he asserted his Right with the Blood and lives of so many thousands that fell in the dispute.

II. That Princes may have an *exclusive property* in the *Sovereignty* of the *several parts of the Sea*, and in the *passage Fishing and shores*, is so evidently true by way of fact, as no Man that is not desperately impudent can deny it, the considerations of the general *practise* in all Maritime Countries, the necessity of *Order* in mutual Commerce, and the *Safety* of Mens persons, Goods and lives, hath taught even the most *Barbarous Nations* to know by the *Light of Human reason*, that *Laws* are as equally necessary for the Government and preservation of the Sea, as those that negotiate and trade on the firm Land; and that to make *Laws* and to give them the *Life* of Execution, must of necessity require a *Supream Authority*, for to leave every part of the Sea and shores to an *Arbitrary and promiscuous use*, with a correcting and securing power in case of wrong or danger, is to make Men with the like condition of the Fishes, where the greater devour and swallow the less.

And though the Sea is as a *High-way*, and common to all; yet it is as other *High-ways* by Lands or great Rivers are; which though *Common and Free*, are not to be *usurped* by private Persons, to their own entire service; but remain to the use of every one, not that their Freedom is such, as that they should be *without protection or Government* of some Prince or Republique, but rather not *exclude* the same; for the true Ensign of liberty and freedom is *protection from those that maintain it in liberty*.

IV. And as the Sea is capable of protection and Government, so is the same no less then the Land subject

See that Plan  
of Chizzola for  
the Venetian  
Sovereignty  
of Adriatique  
Sea, at the end  
of Mr. Selden's

to be divided amongst Men, and appropriated to Cities and Potentats, which long since was ordained of God as a thing most natural, whence it was that Aristotle, when he said, *That unto Maritime Cities the Sea is the Territory, because from thence they take their sustenance and defence*, a thing which cannot be unless part of it might be appropriated in the like manner as the Land is, which is divided betwixt Cities and Governments, not by equal parts, or according to their greatness, but according as they are able to Rule, Govern and defend them: Berne is not the greatest City of Switzerland; yet he hath as large Territory as all the rest of the twelve Cantons put togethether: The Cities of Noremberg and Genoa are very rich and great, yet their Territories hardly exceed their Walls: and Venice the Mistress and Queen of the Mediterranean, was known for many years to be without any manner of possession in the firme Land.

The substance of what was alleadged by the Hanſaticque Towns, at the Venetians asserting of the Sovereignty of the Adriatique, *In ter res communes, uti ipsi Imperator numerat mare, & ideo nemo in mari piscari, aut navigare prohibetur, & adversus inhibentem compe-*

V. Again on the Sea, certain Cities of great force, have possessed large quantities thereof; others of little force, have been contented with the next Waters.

Neither are there wanting examples of such, notwithstanding they are Maritime, yet having fertile Lands lying on the back of them, have been contented therewith without ever attempting to gain any Sea Dominion; others who being awed by their more mighty Neighbours, have been constrained to forbear any such attempt; for which two causes a City or Republique, though it be Maritime, yet it may remain without any possession of the Sea. God hath instituted Principalities for the maintenance of Justice to the benefit of Mankind; which is necessary to be executed as well by Sea, as by Land: Saint Paul saith, that for this cause there were due to Princes Customs and Contributions.

*tit actio injuriarum, l. 10. si quis in mare, l. injuriarum, sect. ult. de injuriis. Sin littora quoque communia sunt, l. 2. re divis. Quia accessorium sunt maris, & accessorium sequitur naturam Principalis, l. 2. de peculio. legat. c. accessorium de reg. jur. in 6. Ad littus maris igitur accedere quivis potest, non piscandi tantum gratia, sed etiam edificandi & occupandi causa, l. quod in litt. de acquir. rer. Dom. l. in litt. ff. nequid in loc. pub. Jo. Angelus l. c. de respub. Hansiat. par. 6. f. 85. Edit. Francos. an. Dom. 1641. But these arguments were easily answered by the Venetian Lawyers; Quemadmodum communio literorum restringitur ad populum, a quo occupata sunt, lib. 3. sect. littora D. de quid in loc. pub. Ita etiam communio maris: adeo, ut per mare a nemine occupatum navigatio sit omnino libera: per mare autem occupatum ab aliquo Principe ii liberam habeant navigationem qui sunt illi Principi subiecti; alii vero catenus, quatenus idem Princeps permittit. Julius Pacius de Dom. maris Adriatici.*

It would be a great absurdity to praise the well Government and defence of the Land, and to condemn that of the Sea; nor doth it follow because of the vastness of the Sea, that it is not possible to be governed and protected, but that proceeds from a defect in Mankind; for Deserts though part of Kingdoms, are impossible to be governed and protected, witness the many Deserts of *Africk*, and the immense vastities of the *New World*.

VI. As it is a gift of God, that a Land by the Laws and publique power be ruled, protected and Governed: so the same happens to the Sea; and those \* are deceived by a gross equivocation, who aver that the Land by reason of its stability ought to be subjected, but not the Sea, for being an unconstant Element, no more then Air, forasmuch as they intend by the Sea and the Air all the parts of the fluid Elements, it is a most certain thing, that they cannot be brought under subjection and Government, because whilst a Man serves himself with any one part of them, the other escapes out of his power; but this chanceth also to Rivers, which cannot be detained; but one is said to rule over a Sea or River, it is understood not of the Element, but of the Scite where they are placed: the Water of the *Adriatique* and *British Seas* continually runs out thereof, and yet is the same Sea as the *Tiber*, *Poe*, *Rhine*, *Thames* or *Severne*, are the same Rivers they were a thousand years since; and this is that that is subject to Princes by way of Protection and Government.

Again, it would seem ridiculous if any Man would assert that the Sea ought to be left without Protection, so that any one might do therein well or ill, robbing, spoiling, and making it unnavigable, or whatsoever should seem fitting in their eyes; from all which it is apparent that the Sea ought to be governed by those by whom it most properly appertains by the Divine disposition.

VII. When \* *Julius Caesar* first undertook the Invasion of this Isle, he summoned the Neighbouring Galls to inform him of the Shores, Ports, Havens and other things convenient that might accelerate his intended Conquest; but from them nothing could be had, they answering, All commerce and traffick, and visiting their Ports was interdicted to all Nations before license had; nor could any

\* *Grotius mare liberum. Communio parit discordiam quod communiter possidetur vitio naturali negligitur: Habet communio rerum gerendarum difficultatem, Leg. pater. Si. dulcissima. Leg. 2.*

\* *Que omnia fore Gallis errant incognita, neque enim temere preter mercatores adit ad illos quisquam, neque eis ipsis quidquam preter oram maritima atque eos Regiones que sunt contra Gallum; notum est. Com. Gall. Bell. lib. 4. fol. 72. m. 8.*



\* *Galls Town* but Merchants visit the same, and then had they places\* near *Yarmouth*, assigned them whether they should come; nor was this being then, as Dominion that the *Britains* then used, commanded with- is conceived, out a *Naval Force*; the sight of which when *Cesar* saw, one of the he preferred them before those of the *Romans*: for upon common pla- ces of Mart or Commerce for that occasion it was that *Cesar*, having seen those *Au-* the *Galls*. *xiliary Squadrons*, which the *Britains* sent the *Galls* in their Expeditions against the *Romans*, took occasion to

*Quod omnibus  
fere Gallinis  
hostibus nostris  
inde sub mini-  
strata auxilia  
intelligebat.*

*Tacit. in vita  
Agricol.*

find out that warlike people, whose bare auxiliary aide shook the Flower of the *Roman Squadrons*.

And when the *Romans* became *Conquerors* of this *Isle*, the same *Right* or *Dominion* was during all their time, supported and maintained when they sailed round their new atcheived *Conquests* in the time of *Domitian*, *Agricola*, giving terrour to all the neighbouring *Nations*.

But when that *Mighy Empire* became subject to fate, and this *Nation* by the continual supply of Men, which went out of the Kingdom to fill up the contingencies of the *Roman Legions*, we became at last so enfeebled as to render us a prey to the *Saxon*; which *Empire* when having settled peace with their *Danish Neighbours*, and quieted their own home, bred quarrells; and having reduced the several petty Kingdoms of their *Hoptarchy* under one *Diadem*, they forgot not to assume their antient *Right and Dominion of the Seas*; as did the most noble *Edgar*, who kept no less a number then 400 *Sail of Ships* to vindicate and ascertain his *Dominion*, giving protection to the peaceable, and punishment to the offender; nor did his Successors *Etheldred*, *Canutus*, *Edmund*, and those that followed of the *Danish Race*, any waies wave, relinquish or loose that Royalty, but obsequiously maintained the same down to the *Conqueror*, and from him since for some upwards of 12 hundred years in a quiet and peaceable possession.

*Altitonantis  
Dei largi-sua  
clementia, qui  
est Rex Regum;  
Ego Edgarus  
Anglorum Ba-  
sileus, omni-  
umque rerum  
Insularum Oce-  
ani que Bri-  
tanniam cir-*

*emjacent, cunctarumque Nationum que infra eam includuntur Imperator & Dominus, ex Charte fundam. Eccles Wigor: Sir John Burroughs fo. 21. Idem quoque Edgarus 400. Naves congregavit, ex quibus omni anno post Festum Paschale 100. Naves ad quamlibet Angli partem statuit; sic Astate Insulam circumnavigavit; Hieme vero indicia in Provincia exercuit, ex Ranulph. Cestrenf. fo. 22. J. B.*

To mention the Antient *Commissions*, and exercise of this Sovereign power, *Safe-conducts*, *Writs of seizure*, *Arrests*, *Records of Grants*, and *Licences* to pass through the

## Of the Flagg.

51

the Sea, and to fish, *Parliament Rolls* and the like, † would † So fully pro-  
make a Volum; in a word, if *Right of Prescription, suc-* ved by Mr. *Selden*, that it  
*cession of inheritance, continual claim, matter of fact, consent* would be im-  
of *History* and *Confessions*, even from the mouths and pens pertinent in  
of *Adversaries*, be of any moment to the asserting of a this Tract to  
Tittle, his Sacred Majesty may be presumed, to have as rehearse the  
good a Tittle to that, as the most absolute† Monarch this authorities he  
day on Earth, hath to what ever he can claim or does vouches.  
enjoy. *Vide Jac. us-*  
*serius Armach.*

VIII. Now the duty of the Flagg is no more but a consecutive acknowledging of that *Right and Dominion* of the *British Seas*, (not as a bare *Honorary Salute* or *Ceremony*, but as an *absolute sign* of the right and *Sovereignty* of those *Seas* where they are obliged to strike Sail: ) are in him to whose *Flagg* the Vail, and pay that duty to; and in substance is no more but that the King grants a general licence for Ships to pass through his Seas, that are his Friends, paying that obedience and duty, like those services when Lords grant out Estates, reserving a *Rose* or *pepper Corn*, the value of which is not regarded, but the remembrance and acknowledging their *Benefactors right* and *Dominion*.

That this hath been an *Antient Custom*, alwaies waiting on that *Sovereignty*, appears by that memorable Record upwards of 400 years since made, where it is declared by King *John* what the *Antient Custom* was, in these words; That if a *Lieutenant* in any *Voyage*, being ordained by *Common Council* of the *Kingdom* do encounter upon the *Sea* any *Ships* or *Vessels*, laden or unladen, that will not strike vail and their *Bonets* at the *Commandment* of the *Lieutenant* of the *King*, but will fight against them of the *Fleet*, that if they can be taken, they be reputed as *Enemies*, and their *Ships*, *Vessels* and *Goods* taken and forfeited as the *Goods* of *Enemies*, although the *Masters* or *Posseffors* of the same would come afterwards, and alledge, that they are the *Ships*, *Vessels* and *Goods* of those that are *Friends* to our *Lord* the *King*, and that the *Common People* in the same be chastised by imprisonment of their *Bodys* for their *Rebellion*, by discretion.

Thus this *Immemorial Custom* was by that prudent Prince affirmed, the which hath been alwaies before, and

*Inter Leges  
Marinas sub  
fine anno regni  
Regis Johannis  
secundo, en-  
titled Le Or-  
dinance al Ha-  
stings.*

ever since, (without interruption by all Nations) constantly pay'd to the *Ships of War*, bearing the *Royall Standard* and other of his Majesties *Ships*, wearing his *Colours* and *Ensigns of Service*; he knowing that undoubted *Maxim of State*, that *Kingdoms* are preserved by reputation, which is as well their strongest support in Peace, as their chiefest safety in time of War, when once they grow dispised, they are either subject to *forreign invasions*, or *domestique troubles*, the which (if possible) that Prince would have prevented, but he lived when those *Celestial Bodies* which govern the action of *Princes* seem to frown on the most *Virtuous and Wise*.

I X. And as there is no Nation in the World more tender and jealous of their honour then the *English*; so none more impatiently tollerate the diminution thereof. Hence it was that in all *Treaties* before, almost any thing other was ascertained the *Dominion of the Sea*, and striking the *Top-sail* was alwaies first provided for.

In the Year 1653, after the *Dutch* had measured the length of their *Swords* with those of this Nation, and being sensible of the odds, and having by their four *Embassadours* most humbly besought Peace, this very Duty of the *Flagg* was demanded by the 15th. *Article*, in these words:

That the *Ships* and *Vessels* of the said *United Provinces*, as well *Men of War* as others, be they in single *Ships*, or in *Fleets* meeting at *Sea* with any of the *Ships* of this State of *England*, or in their service, and wearing the *Flagg*; shall strike the *Flagg*, and lower their *Top-sail*, untill they be passed by, and shall likewise submit themselves to be visited if thereto required, and perform all other respects due to the said *Common Wealth* of *England*, to whom the *Dominion* and *Sovereignty* of the *British Seas* belong.

14 November  
1653.

This was so peremptorily demanded, that without the solemn acknowledging of the *Sovereignty* over the *British Seas*, there was no Peace to be had; that as to the acknowledging of the *Sovereignty* and the *Flag*, they were willing to continue the *Antient Custom*, but that of *Visiting* was somewhat hard: 'tis true the latter Clause was by the *Usurper* waved, for reasons standing with his private interest; but the first was made absolute, by the 13 *Article* between *Him* and

Leo ab Atzma.  
fo. 347.

and that *Republique*, and from thence it was transcribed to the 10 *Article* at *White-Hall*, and afterwards into the 19 *Article* at *Breda*, and from thence into the 6th. *Article* made last at *Westm.* and that Clause of searching of each others Ships made reciprocate, by the 5 *Article* made in the *Marine Treaty* at *London*; but that extends not to Ships of War, but only the Ships of Subjects.

14 September  
1662.

December the  
18 1674. S.V.

X. By the *British Seas* in the *Article* about the *Flagg*, are meant the four *Seas*, and not the *Channel* only; for in the 16 *Article* they did express what was meant by the *British Seas*.†

† But now by the last Treaty at *Westm.* the dominion is ascertained from Cape *Finisterre* to the middle Point of the Land *Van Staten* in *Norway*, 9 Feb. 1673.

That the Inhabitants and Subjects of the United Provinces may with their Ships and Vessels furnished as Merchant Veu, freely use their Navigation, sail pass and repass in the Seas of Great Britain and Ireland, and the Isles within the same, commonly called the *British Seas*, without any wrong or injury to be offered them by the Ships or People of this Commonwealth; but on the contrary shall be treated with all love and friendly offices, and may likewise with their Veu of War not exceeding such a number as shall be agreed upon sail, pass and repass through the said Seas, to and from the Countries and Ports beyond them; but in case the said States General shall have occasion to pass through the said Seas with a greater number of Veu of War, they shall give three Months notice of their intention to the Commonwealth, and obtain their consent for the passing of such a Fleet, for preventing of Jealousy and misunderstanding betwixt the States by means thereof.

Artic. 16. in the Treaty of 15 Nov. 1653.

The first part of this *Article* doth plainly set out the extent of the *British Seas*, and that it is not the bare *Channel* alone that comprehends the same, but the four *Seas*, and the same is further explained in the *Great Case of Constables*, † where the *Dominion* of the *Queen* (before the union) as to the Seas, did extend midway between *England* and *Spain*; but entirely between *England* and *France*; for the *French* never had any right or claim to the *British Seas*: for in the Wars between *Edward the First* and *Philip the Fair*, (all Commerce on both sides being agreed to be free, so that to all Merchants whatsoever there should be *inducia*, which were called *suffragantia Guerra*, and Judges on both sides were appointed

† *Hill.* 29 *Eliz.* B.R. the *Queen* and Sir *John Constables Case.* *Leonard* 3. part 72.

*Selden de Dom. maris* l. 2. cap. 14. 27, 28.



Cooke 4. Inst.  
fo. 141:

to take cognizance of all things done against these *Truces*, and should exercise *Judicium secundum Legem Mercatoriam & formam sufferantie*: it was contained in the first provision of that League, that they should defend each others Rights against all others; this afterwards occasioned the introducing that Judgement in the same Kings time, (before those Judges, chosen by both the said Princes by the *Proctors* of the *Prelates*, *Nobility* and *High Admiral* of England, and all the Cities Towns and Subjects of England. &c. unto which were joyned the suffrages of the most Maritime Nations, as Genoa, Catalonia, Spain, Almain, Zeland, Holland, *Freisland*, Denmark and Norway, and divers other Subjects of the Roman Empire,) against *Reginer Grimbald*, then *Admiral* of France, for that there being Wars between Philip King of France and Guy Earl of Flanders, he had taken Merchants upon those Seas, in their Voyage to Flanders, and despoiled them of their Goods; whereas the Kings of England and their Predecessors, (as they all joyntly do declare and affirm without all controversy beyond the memory of Man,) have had the *Supream Government of the English Seas, and the Islands thereof*.

A universal  
consent of all  
Nations.

*Prescribendo scilicet Leges Statuta atque interdicta armorum, naviumque alio ac Mercatorum, armamentis instructarum, causationes exigendo, tutelam prebendo, ubicunque opus esset, atque alio constituendo quaecunque fuerint necessaria ad pacem, jus & equitatem conservandam inter omnimodas vates tam exteras quam in Imperio Anglicano comprehensas quae per illud transferint; supremam iisdem item fuisse atque esse tutelam; merum mixtum Imperium in iudicando secundum dictas Leges Statuta praescripta & interdicta, aliisque in rebus quae ad summum Imperium attine in locis adjudicatis.*

4. Inst. 142.  
Seldencap. 27  
Mare clausum.

Sir John Bay-  
roughs fo. 42.

By which memorable Record, it apparently shewes that the Kings of England have hand *istud regimen & dominium exclusive* of the King of France bordering upon the same Seas and of all other Kings and Princes whatsoever: and it was there adjudged that *Grimbalds* Patent was an usurpation on the King of England's Dominion, and he adjudged to make satisfaction, or if he proved unable, then the King his Master should and that after satisfaction he rendered to punishment.

And as to the second part of the *Articles* of giving notice,

notice, it was but an Act of Common prudence, their late unexpected visit which they then gave, put the *English* to some surprise; but they facing the *Battavian*, soon made them know that they were as capable of beating them home, as they were then daring in coming out, and were not to be braved out of a *Dominion* and *Right*, which their *Ancestors* had with so much glory acquired and asserted.

XI. By the *Article* of the *Offensive* and *Defensive* League between *France* and the *United Provinces*, it was agreed, That if at any time the *Dutch Fleet* (---- which were to scour the *French Coasts* in the *Mediterranean* from *Pyrats*) should at any time meet the *French*, the *Admiral* of the *Dutch* was to strike his *Flagg* and lower his *Top-Sail* at his first approach to the *French Fleet*, and to salute the *Admiral* of *France* with *Guns*, who was to return the said salute by *Guns* also, as was usual when the *Dutch* and *English Fleet* did meet.

Anno 1635.

Leo ab Aitzma  
Hist Tract. pa-  
cis Belgi pag.  
177. Edit. Lug-  
duni Batavor.  
quarto 1654.

Only in this the right of the *Flagg* of *England* differs from that claimed by the *French*; for if there had been a failer on the part of the *Dutch*, of paying that respect to the *French*, the same would have amounted to no more but a breach of the *League*: but the not striking to the *King of Englands Flagg*, is open *Rebellion*, and the *Article* does so signify, for it is there mentioned as a *Right* and *Sovereignty*, not a bare *Dominion* only, like that of *Jerusalem* to the *King of Spain*.

XII. The *Duty* of the *Flagg* that hath been so constantly pay'd to our *Ancestors*, is of such advantage to the continuing the renown of this *Nation*, that it serveth to imprint new reverence in *Forreigners* that render it, and adds new courage to those of our *Sea Men* that exact it; and since we know how much it imports a *State* that it be revered abroad, and that *Repute* is the principal support of any *Government*, it equally influenceth the *Subjects* at *Home* and *Forreign Allies* abroad: And as there is no *Nation* in the *World* more tender of their *Honour* then the *English*, so none more impatiently tolerate the diminution thereof, with what resentments would not only the more generous and *Noble*, but even the *Popular* and *vulgar Sea Men* detest this or any succeeding *Age* should they remit or loose that *Regality*; those acknowledgements which their *Predecessors* with so much *Glory* asserted, and the neglect

whereof

It is no policy to attempt the change of old Customs and usages, even errors & abuses are upon such an account legally tollerated.

*In omnibus rebus vetustas ipsa plurimum habet dignitatis: ita ut Massilienses quorum præstantissima creditur fuisse Respublica, laudentur eo nomine quod gladio ad puniendos fontes usi sint, eodem a condita Urbe quo indicarent in minimis quoque rebus antiquæ consuetudinis momenta servanda. Proxime enim ad demum accidit Antiquitas, æternitatis quadam imagine. Grot. de Antiq. Rep. Batav. in Præfat. † Vide the Earl of Shaftsbury's Speech to the Parliameht 1672.*

*Ceteris mortalibus in eo stare consilia, quid sibi conducere putent: Principium diversam esse sortem, quibus præcipua rerum ad summam dirigenda. Tacitus Annal. l. 4.*

*Si fama tua videtur necessaria, rectam muneris tui administrationem non potest condonare. Lessius de Inst. l. 2. c. 11. dub. 24. §. 16.*

whereof was alwaies punished as open *Rebellion*: the indignity of such an Action being sufficient to enflame the whole Kingdom, the consideration of which besides his Sacred Majesties own Royal inclination to the same, and his evident testimonies never to abandon a ceremony of so high a concernment; witness the exposing the one half of his own heart his *Royal Highness*, in the asserting the same, with such *Fleets* and in such *Battles*, that no Age or time cannot shew a memorial of the like, are causes sufficient to create in us new flames of love to those *Royal Patriots* and Defenders of our *Rights*. *Private Persons* move in another sphear, and act by other Rules then *Sovereign Powers*; the regard of credit with them, may

oftentimes yield to those of utility or other motives; the *Publique* receives little injury thereby, or is their wisdom questioned for such *punctilio's*, if they relinquish them for other Imoluments or Peace sake; but *Sovereigns* cannot so transact, their subjects the People participate in their Honour and indignities; they have a property, a direct *Right* in the former †: *Sovereignes* cannot alienate or suffer their Honours to be impaired, because it is not really theirs, it appertains to the Nation universally, and they are all effectually injured by such transactions, either because the indignity doth really extend to them, or because the *Government* and *Authority* is thereupon weakened and prejudiced, which is the greatest of *Civil detriments* that can befall a People, though ordinarily they are not aware thereof.

As Prudence doth thus distinguish betwixt the demeanor of *Private* and *Publique* Persons, so doth *Charity* it self; for though the Gospel precepts do oblige particular Persons to bear injuries and contumelies with patience, and to surrender even the *Coat* as well as the *Cloak*; yet is not this so to be construed, as if even *Private Christians* were to yield up their *Civil Rights* to every insolent that would inroach upon, and usurp them, or that they were

to deprive themselves of those *Reparations*, which the *Law* and *Government* affords them; neither is it so to be understood as if the *Civil Magistrate in Christendom* might not secure himself of that obedience and reverence, which is due unto dignity, but *bear the Sword in vain*.

XIII. This being the *value* which this Nation did alwaies place upon the *Right of the Flagg*, the which they never did regard it only as a *Civility* and *Respect*, but as a *principal Testimony of the unquestionable Right of this Nation to the Dominion and superiority of the adjacent Seas*, acknowledged generally by all the *Neighbour States* and *Princes of Europe*, and must be pay'd and acknowledged by all *Princes in the World*, that shall be or pass on the same.

The *Maritime Dominion* by the *Laws of England* were alwaies accounted the *Four Seas*, such as are born thereon, are not *Aliens*, and to be within them is to be within the *Legeance* of the *King and Realm of England*.

The Records in the daies of *Edward the 3d. and Henry the 5th.* proclaim it, that those Kings and their Progenitors had ever been *Lords of the Seas*: and amongst those many great Instances of proving the *Soveraignty* of the same, is that famous Record of *Edward the first* and *Phillip the Fair of France*, in which the *Procurators* of most Nations Bordering upon the Sea throughout *Europe*, as the *Genoefes*, *Catalonians*, *Almaines*, *Zelanders*, *Hollanders*, *Freislanders*, *Danes* and *Norwygians*, besides others under the *Dominion of the Roman German Empire*, where all joyntly declare, That the *Kings of England*, by right of the said *Kingdom* from time to time, whereof there is no memorial to the contrary, have been in peaceable possession of the *Soveraigu Lordship of the Seas of England*, and of the *Isles* within the same, with power of making and establishing *Laws, Statutes and Prohibitions of Arms*, and of *Ships* otherwise furnished then *Merchant Pen* use to be, and of taking surety, and affording safe-guard in all cases where need shall require, and of ordering all things necessary for the maintaining of *Peace, Right and Equity* among all manner of *People*, as well of other *Dominions*, as their own passing through the said *Seas*, and the *Soveraigu Guard* thereof.

By which it plainly appears, That the *King of England* had then been in peaceable possession of the said *Dominion* by

Selden Mar<sup>e</sup>  
Clausum l. 2.  
cap. 24.  
Fitzherberts  
protection tit.  
46:  
Seld. ibidem  
c. 23.  
Co. 4. Instit.  
fo. 142.

Vide part of  
the Record in  
fo. 54.



And the case  
29 Eliz. in B.R.  
Sir John Cor-  
stables, Leonard  
3. part 72, the  
reason of the  
opinion there  
is mistaken; for  
the right unto  
the Sea ariseth  
not from the  
possession of  
the shores; for  
the Sea and  
Land make di-

stinct Territories, and by the Laws of England the Land is called the Realm, but the Sea the Dominion; and as the loss of one Province doth not infer that the Prince must resign up the rest; so the loss of the Land Territory doth not by concomirancy argue the loss of the adjacent Seas. It is no more necessary that every Sea Town should command 100 miles at Sea, then that each City should command 100 miles by Land. *Julius Paucius de Dom. maris Adriatici.*

reasons regarding to the *Lancastrian Line*, which yield a Colour for the use of the *Port-cullis* in the *Royal Banner* of England; yet as in reference to the *Maritime Dominion* Henry 8th. did embellish his Navy Royal therewith, and Queen Elizabeth stamped it upon those *Dollars* which she designed for the *East India Trade*, signifying her Power of shutting up the Seas, if she thought fit (as by a *Port-cullis*) with the Navy Royal; this *Dominion* of the *British Seas* did Authenticate the Proclamation of King James, ordaining the *Flemish* at London and Edinborough to take licence to Fish, this justified the like Proclamation by the late Royal Martyr King Charles, and warranted by the Earl of Northumberland in his Naval Expedition.

Anno Domini  
1636.

Will. Fulbecke  
Pandectis of  
the Law of  
Nations c. 4.

The King as  
gainst Sir John  
Byron Bridge-  
man fo. 23, 24,  
25.

That Prescription is valid against the claims of Sovereign Princes cannot be deny'd, by any who regard the Holy Scripture; reason, the practise and tranquillity of the World: and that true it is, the modern Dutch have pretended, if not dared, to challenge the Freedom to Fish in the *British Seas*, by Prescription; but it is likewise as true that Prescription depends not upon the Corporeal but the Civil possession, and that is retained if claim, be but made so often

as to *barr the Prescription*, the which hath been alwaies made evident; first by frequent *Medals*, next by punishing those that refused it as *Rebels*, by guarding it of it; and lastly by giving *Laws* time out of mind on it, which evidently proves that the *Civil possession* is not relinquished; & our *Kings* constantly claiming the *Dominion* of the same, none else pretending, all *Nations* acknowledging it to be in them, and the same never questioned, till those modern *Dutch* (of yesterday) arose.

XIV. The importance of the *Dominion* of the *Sea* unto this *Nation*, is very great, for alone on that depends our *Security*, our *Wealth*, our *Glory*; from hence it is that *England* hath a *Right* to all those advantages and emoluments, which the *Venetian* *Republique* draws from the *Adriatique Sea*, where the *Ships* of the *Grand Seignior*, of the *Emperor*, *King of Spain*, and *Pope*, pay *Customs*, to maintain those *Fleets*, which give *Laws* to them within the *Gulfe*, 'tis hereby that the *English* can shut up or open these *Seas* for *Ships* or *Fleets* to pass or repass them; whereto *Queen Elizabeth* had so special a regard, that when the *King of Denmark* and the *Hanfiatique* *Towns* solicited her Majesty to permit them free passage, they transporting *Corn* into *Spain*, she refused them; and when a *Protestant Fleet* of *Hamburgers* and others, had presumed to do so notwithstanding her prohibition, she caused her *Navy Royal* to seize, take, burn and spoil them, when they were passed her *Maritime Territory*, within sight of *Lisbon*; yielding this reason for her justification, that they not only relieved her *Enemy* with provisions, but had presumptuously made use of her *Seas*, without obtaining her *Royal Permission* for so doing: 'tis from hence that the *Crown of England* can justly demand an account of any *Ship* or *Ships* occurring in those *Seas*, what's their *Business*, and what their intentions are; and prohibite any *Prince* or *Reipublique*, to enter there with potent *Fleets*, without praeacquainting his Majesty and obtaining his *Royal Permission*; without which *Dominion* and *Sovereignty*, *England* can never live secure on shore, it being easy for any *Forreign Fleets* to amuse us with specious pretenses, and in their passage to invade and surprize us: Thus whilst the *Turk* pretended to sail for *Malta*, he occasionally possessed himself of *Ca-*

Vide postea in  
Chap. of Cu-  
stoms.

June 30. anno  
1598.

nea,

*Selden lib. 1.  
cap. 11.*

*Alber. Gentil.  
Hisp. Advocat  
l. 1. c. 14. vide  
Mr. Secretary,  
Cooke's Letter  
to Sir William  
Boswell April  
16, 1635.*

*\* The fight of  
the Dutch with  
the Spanish  
Fleet, in the  
1639. Downes  
Scilicet hoc fa-  
ctum Hollan.  
dorum est con-  
tra iustitiam  
omnem pro cer-  
do: & contra  
reverentiam  
qua partibus  
& territoriis  
debitur alienis.  
Alb. Gent. Hisp.  
Advocat, l. 1.  
c. 14.*

*Anno Domini  
1551.*

*nea*, in the Isle of *Candia*; many such presidents do occur in History: And in fear of such surprizal, the *Athenians* (being Lords at Sea) did exclude the *Persian* Monarchs from sending any Ships of War into any part of the *Aegean* Sea, *Rhodian*, *Carpathian* and *Lydian* Seas, and that which tends to the *West*, towards *Athens*; the like caution was used by the *Romans* against *Antiochus* and the *Carthaginians*; and the *Turk* prohibits all Nations, saving his Vassals, to enter the *Black Sea* or *Pomus Euxinus*, and also the *Red Sea*; and that 'tis by virtue and force of this right that the *British Nation* can drive on their own Commerce, navigate themselves, and permit others securely to trade with them; 'tis true that the *Dutch* have presumed some years since, to violate the security of the *British Seas*, by the attacking the Allies of *England*, not only within the *British Seas*, but in her Harbours, attempting to pursue a *French* Vessel up almost to *London*, and have more then once \*attacqued the *Spanish* Fleets in her Ports, under the protection of her Castles, and that against the *Laws of Nations*, and the *Peace of Ports*, in which for the time they seemed to cloud the Honour of the Nation, but satisfaction for indignities of that nature, though *slow*, yet are *sure*, and should such as those have been longer tollerated; Beloved *Britannia* must become a prostitute, by a Confederation of those States, or take *Pass-ports* for her Commerce; But the *Royal Martyrs* goodness was no longer to be trod on, his Heart and his Cause were good, and though those unhappy times (which were crooked to whatsoever seem'd straight) did hinder the accomplishments of his entire intention for satisfaction; yet those whom the just God of Heaven was pleased for a time to permit as a punishment to this Nation to rule, did not want in the fulfilling; for so soon as he was pleased to stay the fury of the *Intestine Sword*, their hearts took fire from that flame that had formerly been kindled in that *Royal Brest*, and having prepared a Fleet, in order to the treating as Souldiers with Swords in their hands, they were in the like manner assaulted in their Territories in the *Downes*, (but the *Dutch* found then what it was (though two for one) to assault a *British* *Lyon* at the mouth of his *Den*,) intending, if possible, to have destroyed the *English Power*, but were frustrated in their

their design, being severely beaten home to their own doors; and afterwards those that then had got the *English* Sword in their hands, begun to consider that the *Victory* must be pursued, as a season fit to assert their *Antient Right* and *Soveraignty* of the Sea, and then those people thinking that the odds before was not enough to destroy the *British Fleet*, they equipt out a Fleet greater and far more numerqus then the *English*, under the *Admirals Van Trump, De Witt*, the two *Evertfons*, and *Ruyter*; but they suffered the same fate as their former, about some 34 of their *Ships* on the Coast of *Flanders*, burnt and taken, and the rest chased home to their Ports; and not long after followed the total defeat of their *Naval forces*, accompanied with the death of *Van Trump* by the *English*, under the *Admirals Blake* and *Monk*, who had sunk and fired about 30 more of their *Ships of War* (no quarter being given till the end of the *Bataill*) six *Captains*, and about a thousand *Men* were taken prisoners, and about six thousand slain of their *Presumptions*: since (amongst other things) in denying the duty of the *Flagg*, and of what punishment and check they have had for the same, to what condition they have been reduced and made, to acknowledge that *Dominion* and *Superiority*, to that Crown (under which their *Ancestors* humbly † besought the acceptance of the *Soveraignty* of the *Netherlands*, might be annexed and protected) is now fresh in our memories, so high and of so great Importance is this *Dominion* and *Soveraignty* signified by the *Duty of the Flagg* in the *British* circumjacent Seas.

June 2 and 3.

About the 8  
of Aug. 1653.

† Offered to  
Queen Eliz.  
Cette-cy entre  
autres merite  
bien une consi-  
deration speci-  
ale, Que la con-  
junctiõ desdits  
Pays de Hol-

lande, Zelande, Frize, & des Villes de l'Escluz, & Ostende in Flandres, avec les Royaumes de vostre Majesté, emporte & soit l'Empire de la Grande Mer Oceane; & par consequent une assurance & Felicité perpetuelle pour les Sujets de vostre Serenissime Majesté. John Stow Supplement to Holling shed. An. Dom. 1585; Vide Sir Walter Raleigh lib. 5. cap. 2. §. 2 & 3.



## CHAP. VI.

Of the Right of Pressing or seizing of Ships or  
Mariners, for service publique.

- |                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. That such Right is excepted in the Law of Dominion.</p> <p>II. Whether the Ships of Nations who are in war at the same time may be pressed, the danger being equal.</p> <p>III. Whether this Right extends to Ships to fight, and no more, or gives a power to trade.</p> <p>IV. By the Laws of England the King may seize.</p> <p>V. The reason why such power was vested in the Admiral.</p> | <p>VI. That such a right of compelling Men to serve in Naval Expeditions may be.</p> <p>VII. Objections legal refuted.</p> <p>VIII. Of the antient punishment of such deserters of the Kings service.</p> <p>IX. whether it be lawful for a private Man to execute Justice on such as fly and desert the service.</p> <p>X. Where a General Commission is given to Men to execute Justice.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **T**He Civil Law, though it can command nothing which the Law of Nature forbids, nor forbid what it commands; nevertheless it may circumscribe natural liberty, and prohibit what was naturally lawful: and also by its force *antevert* that very Dominion, which is naturally to be acquired: Hence it is that Princes by the Law of Nations may acquire a Right of use, of things that do belong to private Persons, for property hath not (as hath been said) swallow'd up all that Right, which rose from the Common State of things; for as all Laws are to be construed as neer as possible to the intencion of the Makers, so we must consider what was the mind of those that first introduced singular Dominions; now the Rule to construe that, must be as neer as possible to naturall equity, and that in extream necessity that old right of using things should revive as if the things had remained common, the same standing with the interest of all humane constitutions; and therefore in the Law of Dominion extream necessity seems excepted: Hence it is that the Vessels and Ships of what nature or Nation soever \* that shall be found riding in the Port or Havens of any Prince or State, may be seized on, and imploy'd upon any service

*Enna, aut malo ant necessario facient tentat.* Livy lib. 24.

\* *F. de Navibus non excus.* C. l. 11 tit. 3. and *Pekins* on the same Law.

service of that Sovereign that shall seize, the same being but a harmless utility not divesting the Owners of their interest or property.

II. If a Ship of the King of Denmark be in the Port of London, and the Swede is in War with that Prince; and it happens at that time the King of Britain is in War with the Spaniard, now the possessor is here pressed with an equal necessity, and by the same argument is rather obliged to the defense of his own Country then another, whether by the Law of Nations the Ship ought to be detained, hath been doubted; most certain they may, who would not pluck a Shipwrackt Man from his planck? or a wounded Man from his horse, rather then suffer himself to perish; to slight which is a sin, and to preserve the highest of wisdom; besides in the taking of the Vessel the right is not taken from the Owner, but only the use, which when the necessity is over there is a condition of restoring annexed tacitly to such a seizure.

*Quidni enim (inquit Cicero) quando scire detrimento suo potest, alteri communicet, in iis que sunt accipienti utilia, danta non molesta. 1. de Offic. 1.*

*\* De expeditione Cyri.*

\* And doubtless the same right remains to seize the Ships of War of any Nations, as well as those of Private interest, the which may be employ'd as occasion shall be present: So the Grecians seized on Ships of all Nations that were in Ports, by the advice of Xenophon; but in the time provided food and wages to the Mariners.

III. Whether this Right extends so far as to give Princes a power to seize in order to traffique, may be some question; certainly if the traffique be for such commodities as Masts, Timber, Tar, Powder, shot or other commodities or accoutrements of Armes, or Naval provisions of offence necessary for the defence of the Realm, it may be done (but then it is just, *freight*\* should be pay'd) for what hurt can it do me to let another my Boat to pass over a ford, if he rewards me? and if that be answered, the Owners are at no prejudice, for this is but a harmless utility.

*10 Ed. n. 16.*

*12:*

*\* 23 Ed. 1. Rott. 77. in the Exchequer.*

IV. By the Laws of England there is no question, but the King may seize, and it appears by very many antient Records, that he might do it; and it was one of the Articles of enquiry amongst others, Item, soit in quis de Meiss qui sont arrestez pour le service du Roy ou de l'Admiral, & debreissant le Arrest, then follows, Ordonne estoit en temps du Roy Richard le premier a Grimsby per advise

*12 E. 3. in the Black-Book of the Admiralty p. 26 and 27. 6 Job. m. 11. 9. Job. m. 32. 24. Ed. 2. m. 17. 11 R. 2. m. 13. Rot. Franc.*

De

## Of pressing Ships and Mariners.

de plusieurs Seigneurs du Royaume, que quand Beifs seront arrestez, &c. and that upon such Arrests broken, the parties might be punished and fined.

De Offic. Admiral Angliæ  
per Roughton  
Artic. 10.

Again, *Inquiratur si arrestatus, ad serviendum Regi fre-  
git arrestum, hujusmodi transgressor stat in gratia Regia sive  
Admiralli sui ultrum voluerint committere Carceribus manci-  
pandum vel finem facere, in hac parte si arrestum hujusmodi  
factum manifestum fuerit cognitum.*

The Black-  
Book of the  
Admiralty.  
fo. 28 29 &  
157, 158.  
15. R. 2. c. 3.

If the *Admiral* by the Kings Command arrests any Ships for the Kings service, and he or his *Livetenant* return and certify the Arrest or a List of the Ships arrested, into *Chancery*, no Master or Owner of the Ships so arrested shall be received to plead against the return, pur ceo que l'Admiral & son Lieutenant sont de Record.

Cro. Arg. of  
Hampdens C.  
called the Ship  
money C. fo.  
79 to 100.

And if the Ship so arrested, break the arrest, and the Master or Owner thereof be indicted and convicted devant l'Admiral, by the Oath of 12 Men, the Ship shall be confiscate to the King, which power the *General* maintains in all places where he has power, and the same seems to be provided for in the latter Clause of 15 R. 2. Ca. 3.

Spelmanni  
Cnocil. Tom. fo.  
520, 521.

King *Ethelred*, his *Bishops* and *Nobles* in the General Council of *Canham* an. 1009, for the setting out a Fleet every year; and the punishment of those who hurt or spoiled any Ship, or deserted the service, especially if the King was present in the Expedition; amongst others it was enacted, *Si quis Navem in Reipub. expeditionem designatam vitiauerit, damnum integre restitutio & Pacem Regis violatam compensato; si verum ita prorsus corruerit, ut dainceps nihili habeatur: plenam luito injuriam & lesam præterea Majestatem*, So Sir Henry Spelmans Version out of the Saxon Copy renders it, but the antient Copy hath it more largely.

Spelmanni  
fo. 528 expe-  
ditio Navalis.

*Naves per singulos annos ob patriæ defensionem & munitionem præparentur, postque Sacrosanctum Pascha cum cunctis utensilibus competentibus simul congregentur; qua igitur etiam pœna digni sunt, qui Navium detrimentum in aliquibus perficiunt: notum esse cupimus, quicumque aliquam ex Navibus per quampiam inertiam vel incuriam, vell negligentiam corruerit, & tamen recuperabilis sit; is Navis corruptelam vel fracturam ejusdem per solidam prius recuperet, Regique deinde, eaque pro ejusdem munitionis fractura, sibimet pertinent rite persolvat.*

Most

Most certain it is, that the Kings of England, have in all Ages by their *Writs* and *Patents*, commanded not only the *Admiral*, but the *Wardens* of the *Cinque Ports* and others, to arrest and provide Ships of War and other Vessels, and impress and provide Masters of Ships, Sea Men Mariners, and all other necessary Tackle. Arms and provisions for Ships, for the defense of the Sea and the Realm against forreign Enemies, or for transporting of Armies paying their freight (if not bound there by tenure) as well as to elect and provide all sorts of Souldiers, Carpenters and others Officers to be assistants in their several Expeditions.

Rot. Scotie 10  
E. 3. m. 2. to  
17. and then  
to 34. intus &  
dors. to 28.

But Firshermen or Mariners pressed for the Service, are not to be employ'd as Souldiers, but only as Mariners; unless it be in cas s of great necessity, or bound thereunto, by tenure, Custom or Covenant.

1 Eliz. cap. 13.  
Vide Stat 16.  
17 Car. I. c. 15.

And Water-Men that shall withdraw themselves in time of pressing, shall suffer a fortnights imprisonment, and be prohibited to row on the *Thames*.

2 & 3 P. M.  
C. 16.

V. The reason why the *Admirals* had such power given them, was because they being sometimes called *Capitanei*, and *Gubernatores Flotarum*; they had their ordering and Governing of the Ships of War, and the raising and fitting up such Ships for the Navies, as they thought fit; other times called *Custodes Maritimarum partium* their duty being to provide all Naval provisions, as well to supply the Kings Navies occasions, as to gratify another of the Kings Friends when distress should constrain them to touch in his Ports, that his Subjects might receive the like retaliation: again they were called *Capitanei Navitarum*, & *Marinellorum*; as in reference for the deciding all differences amongst those in the Kings service, and punishing of such as transgressed; and as the place was great, so the power was large, especially in all things belonging to the *Navy-Royall*, in which they had the Supream rule and Government in all things belonging to it. He sat formerly in the Kings House, and there kept his Court, as the *French Admirals* do at this day at the *Marble-Table*, in the Kings House at *Paris*.

Vide Sir Henry  
Spelmans Gloss.  
in tit. Admir.  
Lambert Ar-  
cheion tit. Ad-  
miral. fo. 42.

It is lawful for every Man to addict and yield up himself to whom he pleaseth, as appears both out of the

E

Hebrew



Exodus 21. 6.  
 Inst. de Jure  
 person. §. servi  
 autem. Gell. l.  
 2. C. 7.

Hebrew Law and Roman Law; why then may not any people being at their own dispose, give up themselves to their Prince or Sovereign; so as to transcribe the right of commanding their aide and help, as often as need shall require (it is not here inquired what may be presumed in a doubtful case, but what may be done in point of right,) most certain such a power may well be done, and that grounded on great reason; first if the Common-wealth should happen to be invaded by such a one as seeks not only the subversion of the Government but the destruction of the people, and they can find no other way to preserve themselves, but that the supream power should be vested with such a Prerogative, as to inforce or presse the Inhabitants to serve in Armes in the defence of the same, and the contempt of which to punish, or if they should be oppressed with want, and that supplies of provisions can no waies be had, but by compelling another by force to exhibite the common offices of humanity to a Nation in whose Territories a famine rages, that the Inhabitants should on such extraordinary occasions be compelled by force to serve in Armes.

And this Dominion may be obtained several waies, either by a voluntary resignation to a Conqueror as they of *Capua* to the *Romanes*, *Our Land, the Temples of our Gods, all Divine and humane things, we yield up into your hands, O ye Conscript Fathers*: again Freedom may be granted to all by a Conqueror, except Mariners, which should in cases of necessity be excepted, or that some Prince, who will not suffer any Mariner to go out of his Dominions, without subjecting themselves to such a reasonable command, and the Majority of Nations on such grounds, may abdicate from a part of them the entire Freedom of that member.

Tacitus.

Co. 2. Instit.  
 fo. 3; 8.

Nor are their examples of this kind wanting; the *Germans* are every one Master of his owne house, but are almost on every occasion subject to their *Lords*, especially in their Goods. The *Irish Cosherers*, which were reprehendinations when the *Chief Lord*, and his retinue came to his Tenants House, and fed upon their provisions till they were spent, all being solely at their devotion: And as to the Sea, the King of *Britain* may at this

this day restrain Merchants or Mariners to pass out of the Realm, without licence, and the various tenures that are introduced, which is presumed were since the Conquest, were no other but the will of the Conqueror, for the right is not measured by the excellency of this or that form, but by the will.

VII. And though it hath been conceived by some, that the King cannot presse Men to serve in his Wars, giving their reason, that of old he was to be served either by those that held by tenure, those that covenanted by Indenture to provide Men, or those who contracted with the Kings Officers for wages and entered into pay, or those that were in Prison for the Kings debts; but that only extended to those Wars that were by Land: not one word in all those acts, or Mr. *Rolls*, that any waies mention the least of Mariners; and yet what vast Fleets were in those daies: but on the other hand it hath been alwaies accustomed to presse such sort of Men for the Naval Expeditions, the antient records that mentions such Persons subject to presse by Law is that of 49 E. 3. commonly called *The Inquisition of Queenborough*, wherein it was expressly, in charge amongst others, to inquire of those Mariners that were pressed for the Kings Service, and deserted the same: So likewise by those other Articles translated by *Roughton*, it is expresse in charge to the *Jury* to present those that being prest to serve, brake the Kings Arrest, in order to their punishment; and in those daies it was esteem'd an high offence: and the Oath which the *Jury* then took being impanelled, was this:

This here see My Lord the Admiral, that I Jonathan Nash shall well and truly enquire for our Lord the King, and well and truly at this time then serve at this Court of th' Admiralty, present at moch, as I have acknowledge, or may have by information of any of my fellows, of all mane Articles or circumstances that touchen the Court of the Admiralty and Law of the Sea, the which shall be grate to me at this time; and I thereupon sworne or charged, and of all other that may renew in my minde, and in shall for nothing lette, that is for to say, for franchise, Lordship, kindred, alliance.

E 2

Freindship,

2 E. 1. Memb.  
18. Rott. Pat.  
2 E. 1. m. 17.  
Ro. fin. 31 E.  
1. num. 44. Ro.  
pat. 17 H. 6.  
Ro. Gla. indors.  
Vide the Case  
of Bates, in  
Lanes Reports  
fo. 4.

Co. 6. part.  
Case of Souldier.  
Vide the  
1. Institutes  
fo. 71.

And the Stat.  
of which provides  
punishment for those  
Watermen,  
which shall  
hide themselves,  
does evidence what  
the common  
Law was as  
to the right  
of pressing  
which certainly  
would never  
punish  
those whom  
they could not  
press.

+ 2 Aprilis  
49 E. 3. in the  
Black-Book of  
the Admiralty  
32, 33, 34, Art.  
and fo. 69. Art.  
10.

The Black-  
Book of the  
Admir. f. 17.

Freindship, Love, hatred, Envye Enemicee, for dread of loss of Goodnee, for none other cause that I shall see doe, the Kings Counseils, my fellows, mine owne, will and truly hele what oute fraude or malengyn, so God me help at the hollydome, and by this Book.

Lamb. inter  
Leg. Edouardi  
f. 139. 13 Car.  
2. cap. 9.

VIII. And as the enquiry was strict, so was the punishment very great; Item, *qui fugiet a Domino vel Socio suo pro timiditate belli, vel mortis in conductione Heretichii sui in expeditione navali vel terrestri perdat omne quod suum est, & suam ipsius vitam, manus mittat Dominus ad terram quam ei antea dederat.*

† Non solis du-  
cibus aliisque  
potentibus in-  
nasci solet, at-  
que immorari  
bene agendi  
propositum, sed  
cuique volenti  
& licet & ho-  
nestum est ejus  
qua vivit Rei-  
publice mali  
commoveri, &  
publicas utili-  
tates pro suis  
viribus promo-  
veri Vide Gro-  
tius l. 2. c. 20.

IX. If such Persons shall so desert the service, it hath been a question whether a private Person under the same obedience meeting with such a deserter, might not put him to death; it hath been conceived that he might, and the Act is lawful, and the party that slayes him hath a true right before God, as impunity before Men: But that is to be understood partly by the words, and partly by the letter of the Law; for if the Law gives indulgence to passion, it takes away humane punishment, and not the fault; as in case a Husband kills an adulterous Wife or the adulterer+ in the act, most certain it is a provocation in the highest nature, and will justify the slayer: But if the Law respect the danger of future evill, by delay of punishment, it is conceived to grant right and publique power to a private Man; so that he is not then in the capacity of a private Man.

† That is as to  
entitle him to  
clergy, and so

it was ruled by all the Judges in B. R. M. 23 Car. 2. in the Case of one — found specially at Surrey Assizes before Mr. Justice Twisden, who slew the adulterer in the very act. Vide August. Civit. Dei citatum. C. quicumque. causa 23 qu. 8.

And upon that very reason Queen Elizabeth deny'd the constituting of a Constable, for the Tryal of Sir Francis Drake, who struck off the head of Doughty, in *partibus transmarinis.*

Code Justin.  
tit. quando li-  
ceat unicuique;

X. Hence it is that every Man hath a licence given him to oppose force against plundering and pillaging Souldiers, and the next the subsequent Law about deserters saith, *Let all Men know they have a power given them against publique robbers and desertors that run from their Colours, and all are Ministers of revenge for the quiet of all;*

all; to this purpose is that of *Tertullian*, *Against traitors or publique enemies*, every Man is a Souldier, and herein differs the right of killing of exiles and Outlaws, or those whom they call *Bannitoes*, from those kind of Laws, because there proceeds a special Sentence, the Judgement of Banishment or Outlawry being promulgated; but here a generall Edict, the fact being evident, obtains the force of a Judgement or Sentence pronounced; the Judgement of the latter must be according to the Civil Law, which yet remains still in force, as to the Tryal of such deserters, by which impunity for such killing, seems allow'd off at this day by that Law.

It was in force in England till the beginning of the Reign of *Edw. 3ds.* time. *Co. Inst.* 128. B. 13 H. 4. fo. 4. 5. 37 H. 6. fo. 2.



## CHAP. VII.

### Of Dominion established by Treaties of Alliance equal.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of Treaties by interview of Princes, and where generally held.</p> <p>II. Of Princes equal, the honour pay'd by him in possession to him that comes to the Treaty.</p> <p>III. Of Treaties by Princes unequal.</p> <p>IV. Princes where obliged to treat personally, and where not.</p> <p>V. Deputies their demeanor considered generally at Treaties.</p> <p>VI. Of the nature of Treaties generally, and their ends; and where they determine by the death or dispossession of a Prince, and where not.</p> <p>VII. Of Treaties in reference to matters particular, and of the nature of Leagues offensive, and to what end.</p> <p>VIII. Of the causes ordinary procuring such Leagues.</p> <p>IX. Of Leagues tending to the procuring of general Peace and Warranty.</p> <p>X. Of Leagues defensive, and of their end; together with considerations on the Persons with whom they are made.</p> <p>XI. Of accidents not provided for in the League how far in honour to be comply'd with.</p> | <p>XII. Of Contribution, the difficulty in regulating the same to the satisfaction of the parties interested.</p> <p>XIII. Of Leagues concluded by Deputies, and of the Ratifying the same.</p> <p>XIV. Of the causes extraordinary that tend to the breach of Leagues.</p> <p>XV. Of the causes ordinary that give occasion for rupture of the same, and from whence they proceed.</p> <p>XVI. Of the obligations on Confederates as in reference to mutual succours.</p> <p>XVII. Of Aide granted to particulars and common Allies, when invaded by another Ally; and of protection granted when a people are oppressed, whether aide to such may stand with the League.</p> <p>XVIII. Whether the Oath taken for the performance of such a League is personal, or binds the Successor, and the general rule in construing of the same.</p> <p>XIX. Of Leagues made with Princes, though driven out of their Country when the same are good.</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **T**reaties are acted either by the interview of Princes, or by Persons sufficiently Commissionate for that purpose.

Those that are by interview, have been often disapproved, though often practised; but that depends rather

her of the Estate of affairs, and the conformity and diversity of honours, and manner of living of the Princes and their People; then of the interview: that of *Lewis* the 11th. with Duke *Charles* of *Burgundy*, and with the same King with *Edward* the 4th. of *England*, past fairly, and in all such Treaties they govern themselves as in reference to their supplies, according to the confidence which they repose in each other.

Places Neuter belonging \*to some Common Friend, or or some *Frontiere* or *Islands*, are generally appointed for the same, together with what numbers or forces, they are to be accompanied.

II. But if of two Princes, the one goes home unto the other, he is bound to do him the honour of his House.

And if the Prince be inferiour unto him, he commonly finds forth some of Principal Officers of his Court to receive him; but if he be his equal in Quality, as being both Kings, although there be some debate betwixt him for precedence if he comes first to the Place where the Treaty is to be made, he must go in person, and not by proxy.

In the interview that was between *Lewis* the 12th. and *Ferdinand* of *Arragon* at *Savona*, (which then belonged unto the *French* King) *Lewis* the 12th. at the approach of *Ferdinands* Gally (before he could land) entered into it, accompanied only with his *Guard*, to testify his confidence, and thereby to assure King *Ferdinand* of that which he had promised he should find in him; and at their going to Land, King *Lewis* left the Right hand to *Ferdinand*, who lodged in the Castle, as the most Honourable place, and himself went to the *Bishoprick*.

III. By the Laws of *Treaties*, when two Princes unequal in Quality partly, the inferior is to come first to the place of congress there, to attend the Greater.

IV. *Ambassadors* having received Orders to treat, the Prince to whom such are sent, are not by the Laws of *Treaties* bound to treat personally, but only to depute some of his Council for that effect; the reason is, for that the dignity of a Prince may receive some detriment,

*Jugurth* taken by his Father in Law *Rocchus*, and delivered to the Romans; *Charles* the 7th. of *France*, at a personal Treaty with Duke of *Orleans*, slew the Duke though a Sovereign Prince. *Meyer l. 15. Phil. Comines lib. 4. c. 9, 10.*

\* As that between *Edward* the 4th. and *Lewis* the 11th. in the Territories of the Duke of *Burgundy*.

*Vide Emilius Paulus in History of France; and Ferron his supply of the same of the Life of the Duke of Orleans, afterwards Lewis 12th. upon the failure of issue male of Charles the 8th.*

which cannot be maintained amidst the contestations which happen in Conferences.

But if an Ambassador be deputed as Lievtenant to a Prince, there indeed such Commissioner is not bound to treat, but only with the Prince himself: and so it was where the Bishop of *Gurgia*, who was deputed by the Emperor to Pope *Julio* the Second; the Pope commissioned 3 Cardinals to treat with him, but the Bishop having notice in what quality he was like to be received, commissioned 3 Gentlemen to confer with them, excusing himself upon other affairs; which afterwards was explained, that he came not as a single Ambassador, but as a Livetenant to the Emperor, to the which Quality he had been received at *Rome* by the Pope.

*Julius Ferretus  
de legatis Prin-  
cipum, & de  
eorum fide &  
officio.*

V. The *Deputies* being assembled, their Seats are considerable, they having no power to quit any thing of the ranke, which their *Masters* ought to hold, and by the Laws of Treaties the first place, is at the head or end of the *Table*, (if there be one) the second is the first on the right hand, and the third is, the first on the left hand of him that is at the end; and if there be many *Deputies* to one Prince, they usually sit at one side, to have the more facility to confer together, if it be needful.

VI. Treaties which are made with our Neighbours as Friends, are called *Treaties of Alliances, equal or unequal*: The *equal* is either of single Friendship only, for the entertainment of Traffique, or for aide and succour; that of succour is for the *Defensive* or *offensive*, and sometimes for both, with or against all Men, or against some certain Princes and Republicues and there † Alliances are contracted, either from *Estate* to *Estate*, and for the preservation of the *Estates* of each other (in which case by the death of the Prince they may not be interrupted. Or else they are contracted betwixt Prince and Prince, and then the death of one suspends till a new Treaty hath confirmed it, unless there is a time upon to be the certain prescribed by the *Treaty*, to the which the Alliance must continue after the death of the Prince; or else they are made from an *Estate* and Prince, where the death of the Prince does likewise, if not dissolve; yet at least

† The Leagues between the Crown of France and Spain, are commonly betwixt Kings and Kings, Realm and Realm, and Man and Man of their subjects, and hath in time past been looked upon to be the firmest of Alliances. *Phil. Comines lib. 2. cap. 3.*

least suspend till a new Treaty of Confirmation of the precedents, although by the Laws of *England Rex non intermoritur.*

Scots, and likewise between Ed. 4th. and the Duke of Burgundy. *Phil. Comin. lib. 3. c. 6.*

9 E. 4. 2. d.  
The League  
then made  
with the

VII. Sometimes *Alliances* are contracted for an Enterprize and for one effect only, in the part which the Allies are interessed, and such is generally called *League*; which in *England* have been sometimes confirmed by *Act of Parliament.*\*

\* Rot. Pat. 4.  
H. 5. num. 4.  
Coke 4. Inst.  
156.

Leagues commonly are *offensive*, but in effect they tend to attempt against some one, and in the bottom are lodged *Articles of secrecie for the Enterprize*: and such was that of *Cambray* against the *Venetians*, in which they borrowed the *pretext of Religion*, and the *Peace of Christendom.*

Treaty of  
Cambray, the  
Confederates  
of which were  
Pope Julius  
the 2d. the  
Emperor, King,

of France, Spain and Arragon, anno 1558. *Vide History Republique of Venice, fo. 87.*

VIII. The ordinary causes for which *Princes* and *Republiques* make Leagues, they are either to facilitate a Conquest, as that that was made between *Lewis* the 12th. and *Ferdinand of Arragon*, for the Realm of *Naples*.

Or to ballance the Forces of one that is more mighty, in hindering him that he grow not greater, but Arms ought not to be taken, to diminish such a Neighbours power, for that fear is uncertain, but prudent Leagues may be made in diminishing their power.

*Sed ut vim  
pati posse ad  
vim inferen-  
dam jus tri-  
buat ab omne  
equitatis ab-  
horre. Grotius  
de Jure belli &  
pacis lib. 2.  
cap. 15. S. 17.*

The *English* made a Lague to succour the *Hollanders*, not only to ballance the growing opulancy of the *Spanish* Monarchy, but likewise to encrease her own by the Alliance of the *Dutch*. *Quid sequitur?*

Again, Leagues may be made for the procuring of a general Peace, by way of *Mediation* of their Neighbours in War; and such was that League of Union propounded by His now Sacred Majesty, and afterwards concluded betwixt him and the *States General* of the *United Provinces* for an efficacious Mediation of Peace between *France* and *Spain*, his Sacred Majesty of *Britain* having a prospect to what afterwards happened and of a War, wherein



League of Union between his Majesty of Britain concluded at the Hague, with the States General of the United Netherlands January 23 anno 1668.

wherein most inevitably the same must involve the most of the Princes in *Christendom* in) to the affecting of which Peace, his Majesty and the *States General*, did obtain a promise from the *French King* to the *Dutch*, to lay down Arms, on condition the *Spaniards* would formally and solemnly by a Treaty of Peace, quit to him all those Places and Forts together with the Chastellenies, and their appurtenances which they by force of Armes had taken in, or fortified in the then last years Expedition; or otherwise that the *Spaniard* be brought to transfer to the *French* all their remainder in the Dutchy of *Luxemburg* (or to the County of *Burgundy*) together with *Cambray* and *Cambresis*, *Douay*, *Ayre*, *St. Omers*, *Bergue*, *St. Avinox*, *Fuernes* and *Lyck*, with the Bailywicks, Chastellenies and all other their dependancies, and the *French King* to restore to the *Spaniard* all Places, Territories, which they have by Armes taken since their entrance into *Flanders*, on condition that the *States General* do reciprocally undertake and secure to the *French*, to prevaile with the *Spaniard* to consent to the same conditions, which once effected would (as was hopt) initiate the tranquility of, and interest not only of of two Warring Crownes, but of all other the Princes of *Christendom*. To the effecting of which, there were several Articles agreed, and likewise it was agreed, that if a Peace should happen to be made, his Majesty and the *States General* should become Warranties, and a Place left for any other Prince or State to come into the same, and who should think it their interest to keep the Peace of *Christendom* undisturbed, and to restore the *Low-Countries* to their tranquillity, there was provision made likewise by the same, for the Forces of each of the Warranties to be used against those that should break and violate the same, oblidging them to cease the violence, and repair the party injured.

But a Defensive War is unjust on his part who gave just cause of war.

IX. A *Defensive League*, which hath no other benefit but a necessary defence, and in the which Mean Estates are in a manner equally interessed, last usually longer then an *Offensive League*, which is voluntary, and from the which either of the *Confederates* will easily part when he hath more interest; So as in balancing the interest of the

the one and the other, he that shall find himself accompanied with distrust, and an opinion to be irreconcilable to the common Enemy, generally proves the most firm in the League.

The *Wisdom, Courage, Means and Constancy* of the Prince or State is to be considered; so likewise of the *distance* of the *Places*, as well in regard of those with whom they unite, as of those against whom they make the Leagues.

*Leagues* having no other limitation, but the end of the *Enterprise* for which they were made, have admitted many large debates in cases of accident: For instance, if an Enemy shall take the Country, for the defense whereof the League was made, the Question has been whether the *Confederates* be bound to assist him, who hath lost it in the Recovery; some have held, that the *Defensive* did not extend so far: notwithstanding if there were no Treaty, which had concerned this Conquest, yet it would seem more reasonable to comprehend the Recovery in the defensive, if it be general. For as it hath for its end to preserve the *Allie in his State*, and that to attain unto it, the Forces must not only remain in the Country of the *Allie* to attend the Enemy, but after denunciation and other acts of hostility done by the Enemy, they must enter into his Country, to the end to prevent him or divert him from attempting any thing against the *Allie*: The *Offensive* being judged by the aggression, and not by that which follows; by a stronger reason they ought to enter into the Country conquered from the *Allie*, for the recovery thereof; but excuses in this kind proceed from those, who fail in their faith, courage or means to recover.

Pontius Sannio after restitution made to the Romans, and the author of the breach yielded up expiatum (saith he) ex quicquid ex fœdere rupto irarum in nos celestium fuit. Satis scio quibuscunque dii cordi fuit subigi nos ad necessitatem cedendi res, iis non fuisse cordi tam superbi a Romanis fœderis expiationem speratam: And a little after, What more do I owe to thee, O Roman? what to the League?

what to the Gods, the Judges of the League, whom shall I bring unto thee to be the Judge of thy anger and of my punishment? I refuse no people, nor private Men,

*Contribution* is one of the main ingredients in a League, and is of great difficulty to regulate. It is made either in *Men* or *Money*; the Men are entertained by all Parties, or by him only that hath need; or otherwise as the League is. Henry the 8th. † made a League with

† Anno 1514. Vide Sir Rob. Cotton Remonstr. of the Treaties of Amity and Marriage.

## Of Leagues by Alliance equal.

An. 1515. vide  
Sir Robert Cot-  
ton Remonstr.  
of Treaties.

with Francis the French King against the Emperor Maximilian and Ferdinand; for the Recovery of Millane, which he did, the protection of his Neighbours, and Reduction of the *Swisse* from the Imperial side; for which he employed the Bastard of Savoy, the agreement was of reciprocal Succour of 10000 Men if the War were made by Land, and of 6000 if it were made by Sea; and in all other occasions the French King was bound to assist the King of England with 12000 *Launces*, and the King of France with 10000 Foot, at his charge that had need.

So where Contribution is concluded for Money, there are difficulties that do arise from the Person or Place where it must be kept, for to deliver it to the hand of the strongest, is not safe, for fear they shall not be able to call him to account, to lay it in a weak Place, were to oppose it to the attempt and force of the strongest, or to him that shall first take Armes; but it has been usual, the summe has been advanced, not till after the War begun.

Andree Mauro-  
seni Hist. Ven.

XII. Leagues concluded by the Deputies of the Confederates, there sometimes falls out a Difficulty who shall ratify and declares himself first: In the League which was made between Francis the first, the Pope and the Princes of Italy; the King refused to ratify until the Pope and Venetians had ratify'd before him, and in that he so cunningly wrought, that he procured the Colleagues to declare and begin the War, whilst that he treated secretly for himself, to the end he might make his Conditions with more advantage; this he declared was for fear those Italian foxes should shew him the like.

† If one part hath violated the League, the other may depart from it; for the several Heads of the League have every one the force of a Condition; So Gro-  
tius conceives  
lib. 2. Cap. 13.  
§. 15.

XIII. Leagues made for an Enterprize, succeed seldom according to the hope of the Allies, if the Enterprize be long; for besides the preparations be long, the opinions divers in the pursuit, the resolutions inconstant, the interests of Princes or States in a League may change with time, or with the practise of him against whom they are in League, in withdrawing some one of them, or making him to suffer more losse then the rest, for seeing himself ill defended or succoured by his Confederate, and that he was in a greater danger to loose then his Companions; he then studies to retire † and to make his  
accord

## Of Leagues by Alliance equal.

77

accord apart, as did the Venetians with the Turks, after the losse of Cypresse.

XIV. The ordinary causes of the Rupture of Leagues are distrust jealousy, as if one hath had conference with the Enemy, without the consent of the rest, if that which serveth for the safety of one, diminish the safety of the other; inconstancy, variety, cowardize, division, usurpation without the consent of the others.

So if he treats with the Enemy, not comprehending the other Allies, but as adherents; as Lewis the 12th. left the League of the Venetians, for that they had made a Truce with him, and had presumed to name him only as an Adherent: by the opinion of Bryan, that if all the Subjects of England would make War with a Confederate Prince or Republique in League with the King of England, without the assent of the King of England, that such a War was no breach of the League; and upon the same reason was the resolutions of the Judges in the Duke of Norfolk's Case, where the Question was, whether the Lord Herise and other Subjects of the King of Scots, that without his assent had wasted and burnt divers Towns in England, and proclaimed Enemies, were Enemies in Law, within Statut of 25 E. 3. the League being between the English and Scots, and resolved they were, and that the League remain'd.

XV. The Succours that one Confederate must afford another Confederate (according to the Laws of Leagues) against Confederate, is of a great consequence: Three Princes Allied, the one makes War against the other, and demands succours from the third; in this case if the Treaties of Alliance be only for Friendship, it is certain he is not bound to give any succours: But if the Treaty carries an Offensive League, he must succour the most antient allied by a precedent alliance: If the precedent Alliances have been made both at one time, he must succour him that is allied in all Offensive and Defensive Leagues: but if the League be Offensive and Defensive of either side, he ought not to succour either; but he may mediate a \* Peace, and cause the difference to be judged by the Common Allies, which being propounded with a Declaration that the refuser, or having once submitted

*Soluti fœderis culpam sustinent, non qui deserti ad alios se conferunt, sed quicquam iurati promiserant opem re non prestant. Alibi apud eundem si vel tantillum, ex dictis pars alterutra transgrediretur rupta fore pacta.* Thucyd. lib. 1.

19 E. 4.  
Vide Stat. 2.  
H. 5. cap. 6.

Hill. 14. Eliz.  
in the Duke of Norfolk's Case.  
4. Inst. fo. 152.

+ In fidelitate feudali dicitur; Et si scivero velle te aliquem juste offendere, generaliter vel specialiter suave requisitus meum tibi, sicut potero prestabo auxilium. Orat. Demosthen. de Megalopoli.

\* Nihil intercedi, quo minus Samniti populo pacis bellisque liberum arbitrium sit. Liv. lib. 8.

Grotius de Jure belli ac Pacis lib. 2. c. 15. §. 13.

will





his Successors, or for a time limited, the same does most apparently demonstrate the thing to be real.

However in all Leagues which tend to Peace, though there may remain somewhat, whereby words of ambiguity may arise; yet the most pious way of interpreting, hath been to account the same rather *real*, then *Personal*, for all Leagues made for Peace or Commerce, admit of a favorable construction, *Leagues defensive have more of favour, offensive of burthen.*

XVIII. <sup>a</sup> Leagues made with *Princes*, although they happen afterwards to be driven out of their Kingdoms by their Subjects, yet the League remains firm and good, for the *Right* of the Kingdom remains with such an unfortunate Prince, notwithstanding he hath lost his Kingdom: on the other hand, Leagues made with the *Invader* cannot be good; for his cause being *unjust, is odious*: but if <sup>b</sup> the people will make him King *de facto*, and invest him, the question is then out of all controversy; for then he is become a King *regnant*, and by the Laws of *England*, if treason be committed against his Person, and <sup>c</sup> after he is beaten out, and the King *de Jure* comes to his Crown, the King *de Jure* may punish those Traitors with death.

The Earl of *Warwick* having raised an Army in *France* and *Flanders*, invaded *England*, and within five or six daies after his landing, King *Edwards* Forces betraying him) the Earl became Master of the Realm, the King flying for protection to his Kinsman the Duke of *Burgundy*, he kindly in his misfortunes entertained him; yet while he was in this banished estate, the Duke of *Burgundy* renewed the League with the *English*, it being agreed, that notwithstanding King *Edwards* misfortune, the League remained firm and unviolable between the Duke *Charles* of *Burgundy*, and the King and Realm of *England*: So that for *Edward* they should name *Henry* (who was newly taken out of the *Tower* by the Earl of *Warwick*, at his chasing out of King *Edward*) now the true reason that Leagues remain, and are firm, notwithstanding such a change, is, because there goes along with them a tacite condition, *viz.* of holding their possessions, and therefore the World wondred not, that His late

Sacred

*Addē qua Helvetiis causantur post mortem Henrici 3. apud Thuanum, lib. 97. in An. 1589. Vide & insignem locum apud Cambdenum in Anno 1572, ubi de Fœdere antiquo Gall. & Scotis.*

<sup>a</sup> *Quintus* said to *Nabis*, *VVe* have made no friendship nor society with thee, but with *Pelops* the just and lawfull King of the *Lacedæmonians*.

<sup>b</sup> *11 Hen. 7. cap. 1. c. 4 E. 4. 1. 5. E. 4. 12. 3 Inst. f. 7.*

*Ed. 4. in An. 1470.*

*Phil. Comines l. 3. c. 6.*

*Reges qui Regnis ex uti sunt, cum aliis regni bonis etiam jus legandi perdidērunt.*

## Of Leagues by Alliance equal.

Sacred Majesty having sworn a League with the King of *Spain*, expressly as he was King of *Portugal*, did notwithstanding receive two *Embassadors* from the then new King of *Portugal*; and that without being judged either in *England* or *Spain* to have broken his former Oath and League.

Peter Mathew  
History of  
France in the  
Life of Henry  
the Third.

The Duke of *Guise* having formed the League against *Henry* the Third, which was that in regard, the King was so cold in the Profession of the *Romish Faith*, that it was in danger to be extinguish'd by the increase which he permitted of the *Reformed Religion*; especially seeing *Henry* the Fourth then King of *Navar*, was of that Religion, and was to succeed to the Crown; wherefore by the Mediation of *Philip* the Second of *Spain*, the Pope qualified the Duke of *Guise*, Head of that *Catholique League*, and which in point of Government was to set him above the King, avowed him *Protector* of the *Catholique Faith* in the Kingdom of *France*. When *Henry* the Fourth succeeded the Crown, then this League for security of Religion was most violent, and the *Spaniards* without, hoped, by nourishing thus the *division* within, to carry all for himself at last. To avoid which gin, and to answer all, the King chang'd his Religion, and negotiated by *d'Ossat*, to be received by the Pope as a dutiful Son of the *Church of Rome*, demanding absolution for what was past, and making large promises of due obedience for the time to come; the King of *Spain's* interest was that he should not be received, and thereupon he endeavoured to perswade the Pope, that King *Henry* did but dissemble with him, and that under this disguise he would easiest ruine the *Romish Religion*: notwithstanding this, the *Cardinal* obtained his Reception, Absolution and Benediction through the many promises and presents which he made to *His Holiness*, whereupon the *Spaniards* designs were in a moment all blown over from *France*, but fell heavily upon the *United Provinces* which were sorely oppress'd, for that they apprehended the loss and ruine of their Countrey, and thereupon they implored assistance from King *Henry*, who received their Ambassadors very graciously, and gave them assurance of relief: The King of *Spain*, who wanted no good intelligence

ligence in the Court of *France*, immediately remonstrates to the *Pope*, that his former inclinations concerning *Henry's* dissimulations did now appear in the face of all the World, and that seeing *His Holyness* had been so credulous, he knew not now whether they should be able to save the *Catholique Faith* from being subjected to the *Reformed Religion* or no: for whereas the *Hollanders* had revolted from him, only because he resolved to use the true means for the establishment of the *Romish Faith* among them, and that now he was in a fair way of reducing them, (which conduced so much (by his *Holiness* his opinion) to the establishment of the *Romish Faith*) *Henry* had taken their party against him in that work: and that at *Paris* he had received their Ambassadors to that purpose, although he knew they were his lawful Subjects, &c.

This startled the *Pope* not a little, who charged *d'Offat* for having betrayed him, and put the Church in dangers; this argument was as subtil on the *Spaniards* side, as changing Religion was on King *Henry's*; and therefore the *Cardinal* was not a little perplexed, how to answer it to the advantage of his Master; as also coherently to the considerations of his former reception into the Church: But at last he replied, That *His Holyness* needed not wonder how in reason of State, those different Religions might joyn together for political ends, without hazard of altering Religion: Thus *David* sought protection of the *Philistians*, and *Abraham* redeemed the sinful *Sodomites*: That he took it to be upon the same ground, that *His Holyness* himself not long before, received a *Persian Ambassador*, who was so far from being an Heretick, that he never pretended to the Name of Christian, that it was a plausible argument, which the King of *Spain* used, in complaining of *Henry's* receiving and avowing their Ambassador, especially knowing at the same time that they were Rebels, and could pretend no Right nor Tittle separate from his Crown: For Princes (quoth he) when Ambassadors are addrest to them, never inform themselves of the Rights and Tittle of those

Vide Peter  
Mathews Hist.  
of France in  
Vita Hen. 4.



*In Regno di-*  
*viso gens una,*  
*pro tempore*  
*quasi due gen-*  
*tes habentur:*  
 And Princes  
 are to have  
 an eye to the  
 Power which each Kingdom hath to afford benefit one to the other, and not  
 to examine their Titles.

'Princes from whom they are sent; but whether they have  
 'possession of the Force and Power of those places from  
 'whence the Ambassadors are employ'd, for it would be  
 'an endless taske, and require an infallible true History  
 'of the World (which is not to be made by Man) if all  
 'the Ambassadors before their receptions should be obli-  
 'ged, first to prove clearly to the World the just Right  
 'by which their Masters derive those Tittles and Juris-  
 'dictions, which they assume to themselves.

---

CHAP.

---

## CHAP. VIII.

## Of Alliances unequal, and of Protection.

- I. Of Alliances unequal, as in reference to the acknowledging a Superiority or Protection in another.
- II. Of Protections by a Prince or State voluntary or mercenary.
- III. Of the Duty incumbent on the protected, and the obligation in honour and justice on the Protector.
- IV. Of Alliances unequal, and of the ordinary causes that may tend to a rupture of the same.
- V. Of the causes extraordinary that may occasion the breach of such Alliances.
- VI. Of Faith and assurance implicitly discharged by the delivering of Hostages.
- VII. Of the differences of Leagues contracted by Princes, through force or fear, and private Contracts made with private persons by reason of the same.
- VIII. Ambiguity in words given, occasion to Princes to depart from the League, and of the Reputation of Princes on such occasion preserving the Alliance.
- IX. Of the firmness and assurance of Alliances whether to be found more in Princes, or in Republics.
- X. If one party hath violated the League, whether it be lawful for the other to depart from the same.
- XI. In the construction of Leagues, the thoughts not the words of Princes to be considered.
- XII. Of things favourable, things odious, and others of a mixt nature to be used in the interpreting of Leagues.

**I.** Unequal Alliance is that which is contracted betwixt Princes or States unequal in Honour, or in Power, with unequal conditions, the acknowledging the other, not for Master or Lord, but by Honour as the more powerful, and the better qualified, and some for Protector; and these Treaties are made with those States, which take or give Pension, or which put themselves into Protection. *Andronicus post Rhodius Aristotelem, amicitiæ inter partes, hoc ait proprium ut potentiori plus honoris inferiori plus auxilii deferatur. in Grotius lib. I. cap. 3. §. 21. num. 2.*

Tribute is payed by the Subject, or by him, who, to enjoy his Liberty, payes that which is agreed upon to him that hath forced him to do it. But a Pension is held voluntary from him that is in Protection, or from him that is in all other things equal to the Treaty of Alliance to hinder the Pensioner, that he joyn not with the Enemy, as the Swiss to the French, or to have aid and succours from him. It is the property of friendship twixt unequals, that the stronger have more honour, and the weaker have more help: *Proculus* adds that such a clause is incerted in the League, to signify the one is superior in authority and dignity; for both are free, but are *sub patrocinio, non subditiōe*. *Livy lib. 37. Cicero Offic. 2.*

*Leg. non dubit.  
D. de Cap.*

II. But that *Protection* is most true and Honourable; when a Prince or *Reipublique* takes upon him the defense of another, *freely without reward*, though some, if not all, find it most necessary to ballance honour with profit, from this maxim, that *A pecuniary interest obliges more to succour, then when barely obliged by Oath.*

The *Genoises* having put themselves in the protection of the *French King*, revolted; he thereupon changed their conditions into Priviledges, to the end it might be in his will to deprive them when he should think fit.

*Vide Cardinal. Thuse. P. P. concl. 935.*

III. By the Law of *Protection*, he that is protected owes all *Respect* and *Honour* to his *Protector*, against whom if he conspire or attempt, or strays from his duty, it is lawful for the *Protector* to make *better assurance*; nay, if he pleases to make himself *Master*: But then on the other side, the *Protector* ought to defend and succour the protected, and use him well; for otherwise he may withdraw himself from the *Protection*, and seek another.

IV. In *Alliances* that are unequal, there are 4 kind of controversies may happen.

First, if the Subjects of a Prince or *Reipublique*, that is under the p<sup>ro</sup>te<sup>ctor</sup> of another, have committed any thing *against the League*.

Secondly, if the Prince or *Reipublique* be accused.

Thirdly, if the *Fellows*, which are under the protection of the same, *Prince* or *Reipublique*, contend with one another.

This holds as well between Leagues equal as unequal.

*Grot. de Jure Belli ac Pacis lib. I. cap. 3. §. 21.*

This hath the same right in Leagues that are equal. Nam

*ut quis ultionem sumat ab eo qui peccavit satis est ut ipse ei qui peccavit subditus non sit. Grot. de Jure Belli lib. I. cap. 3. §. 21. n. 5.*

Fourthly, if the Subjects complain of their own Ruler.

To the first, if a fault appear, the Prince or *Reipublique*, is bound either to punish the offender, or render him up to the party injured, and see or endeavour that damages may be recovered.

But one of the *Associates* in the League, hath no right to apprehend or punish the Subjects of his confederate.

To the second, the *Confederate* hath a right to compel his confederate to stand to the League, and if he will not, to punish him; for that one may take satisfaction or revenge of him that hath offended; and this happens as well amongst those that have no confederation at all.

To the third, as in *Confederacies* equal, the controversies are wont generally to be brought before an *Assembly* of the *Confederates*; that is to say, such as are *not concerned* in the question, or else before *Arbitrators*, or else

else before the *Prince* of the *Association*, as a Common Arbitrator.

So on the other hand in a *League unequal*, it is agreed for the most part, that the controversies be debated before him who is *Superior in the League*.

To the last, the *Confederates* have no *Cognizance*. In common Affairs out of time of Assembly, even where the *League* is equal, the Custom is for him who is chose *Cheif of the League*, to have command over the *Confederates*, according to the Speech of the *Corinthians* in *Thucydides*, *It becomes them that are Princes of the League, not to seek their own particular advantage, but to content themselves with an eminency above the rest, in taking care of the common Interest.*

V. Though that the breach of Faith be much practised in such affairs; yet there are few Princes found, which have not found a *pretext*, some have pretended to be circumvented by error; others by change of Affairs have pleaded an excuse, as great wrongs or inevitable loss, and apparent danger of the ruine of their *States*, which are the causes, wherein some say, that an *Oath* is not obligatory; the condition, by reason of the Oath, being impossible or unjust, to these limitations, some hold they must not keep faith with an *Enemy of the Faith*, nor with him that hath broken his, nor with a Subject, nor with a *Thief* or *Pyrat*; certainly if it be not lawful for a Man in these cases to keep *Faith*, it is not lawful to give it: If it be lawful to capitulate with such Men, it is necessary to hold that we promise, that is, (we presume) when the word is given by him that may give it, and that they rely upon it.

VI. If *Hostages* are taken, he that gives them is freed from his *Faith*; for that in receiving *Hostages*, he that receives them hath relinquished from the assurance, which he had in the Faith of him that gave them; so where a *Captain* for his *Prince* gives his word without *Commission*, it binds not the *Prince*.

VII. Some Lawyers would judge of *Treaties* as particular *Contracts*, by which means they would stretch the Consciences of *Princes*; for, say they, that as a private Man is not bound by that which he hath promised by

But that proves not any power of commanding, for Princes do usually try their causes before Judges of their own choosing. *ed. lib. cap. 3. §. 21. n. 6.*

*Decet eos qui Fœderis Principes sunt circa suas quidem utilitates, nihil præcipuum sumere; at in communibus rebus curandis emineresupra ceteros in Orat. Corinthiorum.*

*Oldradus Conf. I.*

*Gregorius Perjurum Deo culpam impingit negligentie.*



## Of Leagues by Alliance unequal.

force or fear, so it ought to take place amongst *Princes* and in *Treaties* which are made betwixt *Sovereigns*, but that is ridiculous, for that were in effect to banish *Faith* from all publique *Negotiations*; for there is no *Treaty* but is usually made in *Arms* by force or through *fear*, to loose either *Life*, or *Goods*, or *Liberty*, or the *State*; which are causes of just *fear*, and may shake the most constant.

VIII. Some *Princes* desirous to shew themselves more *religions* in these ruptures, have taken subject and occasion upon the *ambiguity* of some clauses in the *Treaty*, or upon *equivocation*, as *Charles the Fifth* did; or else they seek other occasions, as attempting against those whom their *Allie* is bound to defend; to the end that drawing him into the field, he may lay the cause of the *Repture* on him.

But *Princes*, who respect such *Treaties* with a pious intention of preserving them, alwaies remain constant and firme; and though occasion may offer it self, by which they might get *advantage* by the breach; yet when they remain durable, such respect is afterwards had to their *Word* and *Honour*, that fewer and lesser securities will be demanded of them, then one whose *Faith* is doubted.

Upon the  
words *Euning*  
and *Enig*, to  
retain the  
*Landgrave* of  
*Hesse*.

Famous was  
the answer of  
the *Carthagi-  
nians* Senate  
to the *Romans*,  
upon the as-  
saulting of *Sa-  
guntum*; *Ego  
non privato pu-  
blicove consilio  
Saguntum op-  
pugnatum, si  
querendum cen-  
seo; sed utrum  
jure an injuria;  
nostra enim hec  
questio atque  
animadversio in  
Civem nostrum,  
est nostrum an  
suo fecerit arbitrio  
vobiscum una  
disputatio est,  
licuerit ne per  
sædus fieri;* Whether *Saguntum* was assaulted by Private or publique Council, we conceive it not to be made the question; but this, whether it was assaulted justly or unjustly, for to our selves an account is to be given by our *Citizens*, whether it did it of himself, or by *Commission*; with you alone this is dispensable, whether it were a violation of the *League*, or no, *Li-  
vius lib. 31.*

IX. But assurances in cases of this nature has been found more in *Reipublicques* then in *Princes*; for though *Reipublicques* have the same mind, and have the same intentions as *Princes*, yet for that they move but slowly, it will cause them to stay longer in resolving: Famous is that of the *Atheneans* when *Themosticles* in his *Oration* told them, that he could discover a matter in which the *Atheneans* would reap great advantages in; but he could not tell it, for fear the discovery would take away the opportunity of atcheiving it: whereupon the *Atheneans* deputed *Aristides*, to whom he should communicate the secret, and with him should consult about the ob-

taining

taining it, they meeting *Themosticles* demonstrated that it was in the power of the *Atheneans* to make themselves Masters of all Greece, for the *Grecian* Naval Army was then in their Ports and Protection; whereupon *Aristides* reply'd, *The same was a breach of Faith*: But it was answered, *it being for the publique, all considerations of that kind ought to be laid aside*; whereupon *Aristides* being called by the People to give a Report, told them, *Themosticles's advice was exceeding profitable, but dishonest*, for which cause the People wholly refused it.

X. If one party has violated the League, the other may most certainly depart from it, for the transgression of the Articles, be it never so little, makes a breach of the agreement; unless it be otherwise prevented by Condition, which may be, by incerting into the same, *† that for every offence it may not be lawful to depart from the League.*

† Grotius de  
Jure Belli ac  
Pacis lib. 2.  
ch. 15. §. 15.

XI. In all Leagues, the thoughts of Princes and States are to be considered not what they said; yet because internal Acts are not visible by themselves, it is necessary that somewhat certain should be determined, *i. e.* reduced to *Heads* or *Writings*: otherwise there would be no obligation at all, for then every one might free himself by affixing on his own words what sense he pleases: Hence it is that by the dictates of *Natural reason*, he, to whom any thing is promised, hath a right to compel the promiser, to that which right *Interpretation* suggesteth, for otherwise the matter would have no end.

In fide quid  
senseris non  
quid dixeris  
cogitandum,  
Cic. de Offic. 1.

XII. In the *Interpretation* of Leagues and Truces, there ought to be a very great care had, in regard of the *Sacredness* of them; therefore in things promised or secured by such Leagues, some are favourable, some odious, some mixt, or of a middle nature. Those that are most favoured, are those whose words tend to Peace, not to War; whose foot-steps leave ever behind, the deep impressions of misery, devastation and poverty, but more especially when such Leagues are made for *War Defensive* then otherwise; but those are called *odious*, which *burden* or *oppress* one part only, or one more then the other, and likewise such as tend to matter of *Revenge* or *Punishment*, or to violate some former acts, or obligations, or the bringing in a change or innovation of what

## Of Leagues by Alliance unequal.

*In L. non pos- sunt. D. de Le- gibus.* *hath been constantly settled, and used before.* Mixt, as where a change is propounded; but that is with the Sisters of Moderation and Peace, which are proportionably good, according as the change may be esteemed.

*Vide exemplum in L. cum vi- rum. C. de fidei commissis.*

*Grotius lib. 2. cap. 16. §. 12.*

Therefore the Standard Rule, is, that in Leagues and Treaties *not odious*, the words are to be taken according to the full extent and propriety of popular use; and if there be more significations, the largest is best: on the other hand we are not to recur to significations plainly improper, unless otherwise some absurdity or inutility of the agreement would follow: Again, words are to be taken ever more strickly then propriety suffers, if it be necessary for the avoyding of *inequity or absurdity*. But if there be not such necessity, *manifest equity or utility* in the restriction, we are to stay them within the narrowest bounds of propriety, unless the circumstances dissuade; on the other hand in *Leagues or Promises odious*, even a figurative speech is admitted, to avoid the *Odium*, or burthen, therefore in *Donation, Remission* of ones *Right, Dominion or property*, they are alwaies to be construed to those things, which were probably thought on, and really intended. So aids and succours promised from one part, only is to be understood to be due at the *charges of him who shall acquire them.*

## CHAP. IX.

### Of Treaties of Truce and Neutrality.

- |                                                            |                                                                      |
|------------------------------------------------------------|----------------------------------------------------------------------|
| I. Of Treaties, the various sorts.                         | VI. Of Treaties of Neutrality, the various sorts.                    |
| II. Of Rules in cases doubtful:                            | VII. Of the advantages of the same.                                  |
| III. Of Truces amounting to a Peace.                       | VIII. In cases of necessity where he ought to declare, and for whom. |
| IV. Of the advantages between Treaties of Truce and Peace. |                                                                      |
| V. How preserved and punished in England.                  |                                                                      |

**I.** *Treaties* are either with *Enemies* or *Friends*, or with Persons which desire to continue *Nenters* with us, or we with them.

The *Treaties* which are made with our *Enemies*, are either for a *time*, or *perpetual*.

*Perpetual*, as the *Peace* that is made to compose all differences, and the *War* that is undertaken for *Conquest*, or for *Reparation* of injuries, or to restore the *Commerce*.

*Treaties* which are made for a time with our *Enemies*, are called *Truces*; the which are either *General*, for all the States of the one or the other Prince, for all Persons, and for all sorts of *Commerce*: Or else they are *Particular*, for certain *Places*, for certain *Persons*, and for the *Commerce*.

**II.** When any one is bound by *Alliance* not to make *Peace* or *Truce*, without the consent of his *Allie*, and whose agreement seems doubtful, they set down no prefixed time, but, that it shall continue till he refuse, and some reasonable time ascertained after, as that which was made betwixt *Charles* the Eighth, and the King of *Spain*. In the *Truce* that was made between *Edw.* the 4th. and *Lewis* the 11th. there was like provision made for *Charles* Duke of *Burgundy*, but he refused, and concluded a *Peace* for himself a part. being angry with *Edw.* the 4th. for making the same, *Philip.* Com. lib. 4. c. 40. So *Lewis* the 11th. concluded a *Truce* for nine Years with *Edw.* the 4th. when he had invaded *France*, *Phil. Com. lib. 4. cap. 8.*

**III.** Sometimes a *General Truce* holds the place of a *Peace*,



## Of Treaties of Truce and Neutrality.

*Peace*, as that of a hundred years. Such Truces are commonly made betwixt Princes that are *equal in Power*, and will not *quit* any thing of their *Rights* by *Peace*; and yet desire to live quietly in the State wherein they are, *satisfying by this medium, the Point of Honour*.

IV. *Treaties of Truce* are many times less subject to *Rupture* than a *Peace*, which is made *perpetual*, for Princes or States that find themselves aggrieved with a Treaty that is perpetual, seek out plausible reasons to forsake it, seeing the grievance cannot be otherwise repaired; but if the time be limited and expired, they may pursue that which they think *ought to be granted*, and the other may oppose; and if they have a desire to continue the *Truce*, there is nothing so easy as to renew it. Hence it is become a *Maxim* in State, that seeing *Treaties* are grounded on the *Interests of Princes which change with the time*, it is necessary to *change and settle them at the end of the time, or to break them off*; for it is in vain to trust to a bare Friendship.

A *Truce* is likewise made to *advance* a *Peace*, and to treat it; so likewise it is sometimes promoted for the more honest discharge of a *League*, which is made with some other Prince, whom they have accustomed to comprehend therein: so as a *Peace* following it, or a *Truce* not being accepted by him, they take occasion to leave the *League*, *it being not his fault that leaves it*, that the *War* was not ended.

\* For the Right remains with him: how ever, he hath lost the possession. Grot. de Jure Belli ac Pacis lib. 2. ch. 16. §. 18.

And although it seems that a *Truce* cannot by its condition prejudice the *pretention* in the *Principal*; yet it is most certain that if he which is chased out of a contentious State, consents, that during the *Truce*, the *Commerce* shall be forbidden to his Subjects, he doth wholly stop the gate,\* as *Lewis* the 12th. did in the *Truce* which he made with *Gonsalve*, after the Conquest of the Realm of *Naples*.

2 H. 5. cap. 6.

In *England* by the Stat. 2 H. 5. cap. 6. Robbery, Spoiling, breaking of *Truces* and *Safe-Conduits* by any of the Kings Liege People, and Subjects within *England*, *Ireland* and *Wales*, or upon the main Sea, was adjudged and determined to be High-treason; but this branch concerning High-treason, is repealed by the Stat. of 20 H. 6. cap. 11. but by the said Act of 2 H. 5. for the better obser-

20 H. 6. cap. 11.

obser-

observation of Truces and Safe-Conducts, *Conservator* † And at the  
*Induciarum & salvorum Regis conductum*, was raised and the Lords of  
appointed in every Port of the Sea by Letters Patents, Request of  
his Office was to enquire of all offences done against the and Commons  
Kings Truces, and Safe-Conducts upon the main Sea (out he making sa-  
of the Counties and out of the liberties of *Cinque Ports*, tisfaction for  
as *Admirals* of Custom were used to do. Sir *John Trebiel* the loss. 11  
was committed to the *Tower*, for taking a *French Ship*, and H. 4. ad *Parli-*  
being brought into *Parliament* did there justify the same; *ament tent*  
but at last confessed his fault, and begged the Kings Pardon: *quenden Hill;*  
† generally all Leagues and Safe-Conducts are, or ought *vide Cotton A-*  
to be of *Record*, that is, they ought to be *Inrolled in the* *bridgement.*  
*Chancery*, to the end the Subject may know who are in 19 E. 4. 6. B.  
Amity with the King, and who not: who be Enemies, 18 H. 6. ca 4.  
and can have no Action here, and who in League, and 20 H. 6. cap. 1.  
may have Actions personal here.

Sometimes they have been inrolled in the *Wardrobe*, 19 E. 4. 6. B.  
as being matters of State.

Note; In all Treaties, the power of the one party, and the *Maxime.*  
other, ought to be equal; nor are they to be held firm till  
ratified.

Before the Statute when any breach of Truces or Lea- *Rott. Scotie de*  
gues happened, or was occasioned by the misdemeanours *An. 10 E. 3. m.*  
of any of the King of *Englands* Subjects, there did usu- 36. *intus de*  
ally issue forth Commissions under the *Great Seal of Eng-* *puniendo illos*  
*land*, to enquire of the fringers of the same, and to pu- *qui contra for-*  
nish and award satisfaction to the injured. *nam Treuge*  
*bominibus de*  
*Scotia concessa*  
*deliquerint.*

VI. Princes who neither love nor hate any thing ab-  
solutely, seem generally inclined to *neutrality*, and in  
that govern themselves in their Friendships, according  
to their interests; and *Reasons of State*, in effect is no  
other but *Reason of Interest*.

*Neutrality* may be of two sorts; the one with *Al-*  
*liance with either part*, the other *without Alliance*, or so  
much as the least tie to the one or other, which is that  
which properly may be called *Neutrality*.

The first is governed by the *Treaty of Neutrality*, the  
latter by the *Discretion of the Neuter Prince*, whose car-  
riage ought alwaies to be such, as that he may not give the  
least glimpse of inclining more to one then to another.

VII. The advantages of *Neutrality*, are, that the  
*neuter*

## Of Treaties of Trucea and Neutrality.

neuter Prince or Republique is honoured and respected of both Parties, and by the fear of his declaring against one of them he remains Arbitrator of others, & Master of himself.

And as a Neuter neither purchases Friends, nor frees himself from Enemies; so commonly he proves a prey to the Victor: hence it is held more advantage to hazard in a Conquest with a Companion, then to remain in a State wherein he is in all probability of being ruined by the one or the other.

But Princes that are powerful, have used generally to preserve a Neutrality: for whilst Petty Princes and States ruin themselves by War, he fortifies himself with means; and in the end, may make himself Judge of their differences.

On the other hand, it hath been conceived, that Reipublicues that are weak, what part soever they take, it will be dangerous unto them, especially if they are in the midst of two more powerful States then themselves; but experience hath made it appear to the contrary, that Neutrality is more beneficial to a weak Prince or Reipublique; so that they that are at War be not barbarous or inhumane; for although a Neutrality does not please either party, yet in effect wrongs no Man; and as he doth not serve, so he does not hurt; besides his declaration is reserved till the issue of the War, by which means he is not obliged that by siding with either party, to gain or loose by the War.

† An. 1674 Consul Quintus ad Acheos, quod optimum esse dicant non interponi vos bello: imo nihil tam alienam rebus vestris est: Quippe sine gratia, ne dignitate premium victoris eritis. Lucius lib. 35 Scripta Ammirat disc. polit. l. 18. disc. polit.

VIII. But if the Neuter be prest by necessity to declare himself, he must do it for the most powerful of the two parties, following that Roman Maxime, That either they must make themselves the strongest, or be a friend to the strongest: So they of Strasburgh † declared for the Empire against the French; on the other hand, if the Neuter sees, that joyning to the weaker, will ballance the power of the stronger, and by this counterpoize, reduce them to reason: the same hath been generally followed upon the Maxime, That the safety of States consist chiefly in an equal counterpoize of the one, and the other; for as the greatness and opulancy of a Prince draws after it the ruin of their Neighbours, it is wisdom to prevent it.

## CHAP. X.

### Of the Immunities and Priviledges of Ambassadors, and other publique Ministers of State.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of the Function of Ambassadors and Agents generally.</p> <p>II. Of their right and protection by the Laws Divine and of Nations.</p> <p>III. Of precaution, whether the same may be given to such not to come, and attempting against such interdiction, how dealt with, and of punishment of those that shall hurt them by the Laws of England.</p> <p>IV. Of the several causes that Princes or Reipubliques may reject such publique Ministers of State.</p> <p>V. Where Ambassadors may be subjected to punishment by the Laws of Nations.</p> <p>VI. Of the proceeding against them by Princes &amp; States at this day, according to the practise of Nations.</p> <p>VII. Of the various proceedings against them by several Princes and Reipubliques, illustrated in 15 Presidents of examples.</p> <p>VIII. Of the proceeding against them, according to the practise in England.</p> | <p>IX. Ambassadors, where they forfeit their Priviledge by the Laws of England.</p> <p>X. Where actions committed by them, though against the known Laws, yet obliges them not to a forfeiture of their Priviledge.</p> <p>XI. Of the duty of Ambassadors in cases Civil, and what their Office includes for the King and Nation, whom they represent.</p> <p>XII. Whether the House of an Ambassador can be a Sanctuary, or whether he may exercise a Royal Jurisdiction over his Servants and Vassals; whether the same proceeds from the Laws of Nations.</p> <p>XIII. Whether the Goods of an Ambassador may be seized for debt or other Contracts.</p> <p>XIV. Whether outrages committed by publique Ministers of State, can subject them to punishment.</p> <p>XV. Of the punishment of those that commit any outrage on them.</p> <p>XVI. Some observation of the immunities and Government by the Laws of Venice of their Ambassadors.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**A**N Ambassador and Agent is the same thing, if we consider only the Function of their Charges: only in this they differ; an Agent hath charge to represent the Affairs only, but an Ambassadors ought represent the Greatness of his Master, and of his Affairs.

II. The



*Pompon. Leg. si 100: and as Protection is given to the Legates of Supream Rulers by the Laws of Nations, so by the Civil Law, there is a protection likewise for Provincial Legates, and Heraults, &c. This Right of Legation was originally provided, saith Livy, for a Forreigner, not a Citizen, yet in Civil Wars, necessity sometimes makes place for this right besides the Rule, as when the People are so divided into equal parts, that it is doubtful on which side the right of Empire lyeth; as that unhappy spot of Flanders, or when the right being much controverted, two contend for the succession to the Throne; for in this case one Nation is reckoned as two, and so was the State of England, when the House of York and Lancaster, contended for the Crown; nay, this right of Legation hath been preserved that the very Messengers of Rebels have been protected, as were those of Holland by Phillip of Spain: So great a respect + have Nations had in all times to such Men, that even Pyrats and Robbers, who make not a Society, nor have any Protection by the Law of Nations, and with whom neither Faith nor Oath (as some conceive) may be kept; Faith being given them, obtain the right of Legation, as once the Fugitives in the Perynean Forest.*

*Livy lib. 1. 6.*

*Kings conquered in a solemn War, and deprived of their Kingdom with other Royalties, loose the right Legation. \* P. Amilius detain'd the Heralds of Perseus, whom he conquered.*

*+ P. Poole a Traitor, fled to Rome, the Pope sent him Ambassador to the French King, of whom the King of England demands his Subject, sed non prevaluit. Co. Inst. 3. fo. 153.*

*III. Ambassadors may by a precaution be warned not to come, if they dare, they shall be taken for Enemies; but once admitted even with Enemies in Arms, much less with Enemies not in actual hostility, have the protection and Safe-guard of the Laws of Nations; and therefore their Quallity being admitted by Safe-conduct, they are to be preserved as Princes; and so it was declared in Parliament, where the killing of John Imperial, Ambassador from the States of Genoa, was High-treason, Crimen lese Majestatis.*

*\* Legatus ejus vice fungitur a quo destinatur, & honorandus est sicut ille cuius vicem gerit, & Lega.*

*\* So likewise of A. de Walton, the Kings Ambassador Nuncium Domini Regis missum ad mandatum Regis extos violare, contra jus Gentium est. 12 Assize pl. 49. Note, this was 3 years before the making of the Stat. of 25 E. 3. quere if such a Prorex is within the Stat. at this day.*

*quendum*

*quendum*, who was murdered by one *John Hill*, for which offence it was adjudged High-treason, and accordingly he was drawn, hang'd and beheaded.

IV. On the other hand, Ambassadors may not alwaies be received, though alwaies they ought not to be rejected; for there may be cause from him from whom they come, as the *Roman Senate* would not admit of the Ambassage of the *Carthaginian*, whose Army was then in *Italy*; the King of *Spain* those of *Holland*, and the then Pope the Ambassadors of *Henry the 2d.* after the murder of *Becket* Arch-Bishop of *Canterbury*: so likewise from the very Persons that are sent, as *Theodorus Athest*, whom *Lisimachus* would not give Audience to, and Mr. *Oliver Lewis the 11th's Barber*, whom they of *Caunt* refused.

So likewise where the cause of sending is suspected, as in reference to disturbe the People or intentions rather to sow sedition then to conclude a Peace (if such be their errand) or not honourable or unseasonable; as for those assiduous Legations which are now in use, they may with very good right be rejected; for the no-necessity of them appears, by the Antient Custom whereto they are unknown.

The *Venetian* having admitted *Henry the Fourth* of *France* his Ambassador, yet they interdicted him † to come with the other Ambassadors to the *Chappel*, till the King was reconciled to the *Church of Rome*.

V. By the Laws of Nations, only unjust force is kept from the Bodies of Ambassadors; for if the Laws of Nations be broken by him, he is subject to punishment.

Yet the opinion of Nations and Men Eminent for Wisdom, have been doubtful in this point, and Prefidents on both sides have been avouched, one which seems to refute that position of punishing such Ministers of State: the Ambassadors of *Tarquin*, who had committed treason at *Rome*, \* and as *Livy* observes, were in the State of Enemies; yet the *Right of Nations*, as he calls it, prevailed so far as to preserve them, although in a case of hostility: On the other hand, † *Salust* observes, that *Bomilicar*, one of the *Carthaginian* Ambassadors, *vise misisse ut Hostium loco essent, jure tamen Gentium valuit: † Fit reus magis ex equo bonoque quam ex jure Gentium, Bomilicari comes ei qui Romam fide publ. venerat.*

*Cambden 1571*  
*questionum ibi*  
*pro posticarum*  
*quarta.*  
*Daniels Hist.*  
*of Henry the*  
*Second.*

*Carolus quin-*  
*tus Imp. Gallie*  
*Venetorum &*  
*Florentinorum*  
*ad bellum sibi*  
*indicendum*  
*missos deduci*  
*jussit in locum*  
*qui a comitatu*  
*suo abesset, tri-*  
*ginta miliarum*  
*aria, Guic. lib. 8.*  
*Belaius lib. 3.*  
*† Card. Arnold.*  
*Offat in his*  
*353 Epistle.*  
*Coke 4. Inst.*  
*153.*

*Menander Pro-*  
*rector Justinio*  
*Imper. Avaro-*  
*rum Legatos*  
*contra jus Le-*  
*gationum in*  
*vinculis habuit*  
*Cothmannum*  
*Resp. 32. num.*  
*29. Co. Inst. 4.*  
*153. 2. H. 5.*  
*Cap. 6. 20 H*  
*6: Cap. 11.*

\* *Quonquam*  
*visi sunt com-*  
*missi ut Hostium loco essent, jure tamen Gentium valuit: † Fit reus magis ex equo bonoque quam ex jure Gentium, Bomilicari comes ei qui Romam fide publ. venerat.*

who

who came to Rome on the Publique Faith, was adjudged guilty, rather (saith he) by the Rules of Equity, then by the Laws of Nations; Equity, that is the meer Law of Nature suffers punishment to be exacted where there is found a delinquent, but the Laws of Nations except the Persons of Ambassadors; for certainly their security outweighs the profit arising from punishment, which may be inflicted by him that hath sent him (if he be willing) if unwilling, it may be exacted of him as an approver of the crime.

An Enemy is bound to whom they are sent, but their Priviledge obliges not those through whose bounds they pass without leave. For if they go to, or come from their Enemies, or make any hostile attempt, they may be slain. *Livy lib. 26.*

VI. Again, as Ambassadors are not to render a reason of their actions to any other, but him by whom they are sent and it is impossible, but by the reason of various Interests and other secrets of State, which pass through their hands, somewhat may be said, which bears a show or face of crime, (which perhaps may prove otherwise,) yet the examining and tracing of the truth, may be of a dangerous consequence, and therefore if the offence be such as may be contemned, it is usually to be disssembled or connived at, or else the Ambassadour be commanded to depart the Realm; and if the crime be cruel, and publicly mischievous, the Ambassadors may be sent with Letters of Request to his Master to inflict punishment, according to the offence: So likewise in the precaution of a great mischief, especially publique, (if there be no other remedy) Ambassadors may be apprehended and executed; and if they oppose by force of Arms, they may be slain.

*Grotius de jure Belli ac Pacis lib. 2. Cap. 18. S. 4. n. 4 & 5. Senatus faciem secum attulerat auctoritatem Reip. M. Tullius 8.*

\* *Co. Inst. 4. f. 152. Sic Carolus quintus Legatus Ducis Mediolanensis ut subditi sui imperavit, ne a Comitatu suo abjederet, Guicciardi indicat jam loc.*

In the Bishop of Rosses Case, An. 13 Eliz. the question was, *An Legatus qui rebellionem contra Principem ad quem Legatus concitat, Legati Privilegiis gaudeat, & non ut hostis panis subjaceat*; and it was resolved, that he had lost the Priviledge of an Ambassador, and was subject to punishment; nor can Ambassadors be defended by the Law of Nations, when they commit any thing against the State or Person of the Prince with whom they reside.

And

And why Ambassadors are in safety in their Enemies Countries, and are to be spared when they commit offences, is not so much for their own or *Masters* sake, but because without them there will never be an end of hostility, nor Peace after Wars: neither is the Name or Person of an Ambassador so inviolable, either in Peace or in time of War, but there may be both a convenient time and a good occasion to punish them, and this standing with the Laws of Nations.

VII. The Signiory of Venice understanding that certain Traytors, who had revealed their *Secrets* to the Turk, were fled for protection into the House of the French Ambassador at Venice, sent Officers to search the Ambassador's House; but the Ambassador refusing them entrance, the Senate commanded certain Cannon to be brought out of the Arsenal to beat down his House, which when he saw planted, he surrendered up the Traytors.

(1) The Ambassadors of *Tarquins*, *Morte affligendos Romani non judicant, & quanquam visi sunt ut hostium loco essent, jus tamen Gentium voluit.*

(2) The State of Rome, though in case of most capital crimes, exempted the Tribunes of the People from question during the Year of Office. *August. de Leg. Antiq. Rom.*

(3) The Ambassadors of the Protestants, at the Council of Trent, though divulging there the Doctrine of the Church, contrary to a Decree there, enacted a crime equivalent to Treason, yet stood they protected from any punishment. *Acta Trident. Concilii.*

It is generally consented by all the Civilians, That *Legis de jure Gentium indicium est, & eorum corpora salva sint, propter necessitatem Legationis ac ne confundant jura commercii inter Principes.* *Pompon. Leg. ult. D. de Leg. patis.*

(4) *Viva*, the Popes Legates, was restrained by Henry the Second, for exercising a Power within his Realm, not allowed or admitted of by the King, in disquiet of the State, and forced to swear not to act any thing in *præjudicium Regis vel Regni.*

(5) On the other hand, it has been answered, that they *Benedict. in Vita Henr. 2.1*



they are by the Laws of Nations exempted from Regal Tryal, all actions of one so quallified, being made the act of his Master, or those whom he represents, until he or they disadvow, and injuries of one *Absolute Prince* or *State* to another, is *factum hostilitatis*, and not *Treason*; the immunity of whom *Civilians* collect as they do the rest of their grounds from the practise of the *Roman State*, deducing their Arguments these examples; The *Fabii* Ambassadors from *Rome* were turn'd safe from the *Chades*, with demand of Justice against them only, although they had been taken bearing Arms with the *Ethurian* their Enemies. *Titus Liv. 2. Dec.*

Colloquium  
Machiav. lib. 2.  
cap. 28.

(6) King *Edward* the Second of *England*, sent amongst others a *French Gentleman* Ambassador into *France*; the King upon this arraigned him as a Traytor, for serving the King of *England* as Ambassador, who was his Enemy; (but the Queen procured his pardon.)

Rott. Scaccar.  
westm. claus.  
Edw. primi.

(7) *Henry* the Third did the like to one of the *Popes* Ambassadors, his *Colleague* flying the Realm secretly, fearing *timens pelli sui*, as the Records has it. *Edmond* the First restrained another of the *Popes* turbulent Ambassadors, untill he had (as his progenitors had) informed the *Pope* of the fault of his *Minister*, and received satisfaction for the wrongs.

(8) *Henry* the Eighth commanded a *French* Ambassador to depart presently out of the Realm; but because he was the professed enemy of the Seat of *Rome*.

(9) *Lewis de Prat*, Ambassador for *Charles* the Fifth, was commanded to his house, for accusing falsely *Cardinal Wolfey* to have practised a breach between *Henry* the Eighth and his Master, to make up the amity with the *French* King 1523.

(10) *Sir Michael Throgmorton* by *Charles* the Ninth of *France* was so served, for being too busie with the *Prince* of *Condy* his faction.

(11) The *Popes* Ambassador at *Paris* was arraigned for practising certain Treasons in *France*, against the King in the *Parliament* of *Paris*, and was there found guilty and committed to Prison.

(12) *Doctor Man* in the Year 1567, was taken from his

his house at *Madrid* in *Spain*, and put under a Guard to a straighter Lodging, for breeding a scandal (as the *Conde Teri* said) in using by Warrant of his place, the Religion of his Countrey, although he alledged the like permitted to *Guzman de Silva* their Ambassador in *England*, and to the *Turke*, no less then in *Spain*.

(13) *Francis* the First King of *France*, sent *Cesar Tregosus* and *Anthony Rincone*, Ambassadors to the *Turk*, they were surpris'd by the Armies of *Charles* the Fifth, on the River *Poe*, in *Italy*, and were put to death; the *French* King complained that they were wrongfully murdered, but the *Emperor* justified their death; for that the one being a *Genois*, and the other a *Milanois*, and his Subjects feared not to serve the King his Enemy.

(14) *Henry* the Eighth being in League with the *French* and at enmity with the *Pope*, who was in League with the *French* King, and who had sent *Cardinal Poole* to the *French* King, of whom King *Henry* demanded the *Cardinal*, being his Subject, and attainted of Treason; *sed non prevaluit*.

(15) *Samuel Pelagii*, a Subject to the King of *Morocco*, pretended that he was an Ambassador sent unto the *States General* of the *United Provinces*; he came to them, and accordingly they did treat with him, afterwards he departed; and being upon the Sea, he did take and spoil a *Spanish* Ship, and then came into *England*; the *Spanish* Ambassador here having received intelligence of the spoliation, caused his Person to be seized upon, intending to proceed against him as against a *Pyrat*, and imprisoned him, and upon conference with the *Lord Coke*, *Dordridge*, and other Judges and *Civilians*, they declared their opinions, That this Caption of the *Spaniards* Goods by the *Morocco* Ambassador, the same is not in Judgement of Law a *Pyracy*, in regard it being apparent that the King of *Spain* and the King of *Morocco* are enemies, and the same was done in open Hostility, and therefore in Judgement of Law could not be called *Spoliatio*, *sed legalis Captio*, and a Case out of 2 R. 3. fo. 2. was vouched, where a *Spanish* Merchant before the King and his Council, in *Camera Scaccarii*, brought a Bill against divers *Englisk-Men* there in setting

setting forth *quod depraedatus & spoliatus fuit* upon the Sea, *juxta partes Britanniae*, per *quendam Virum bellicosum de Britannia de quadam Navi*, and of divers Merchandizes therein, which were brought into England, and came into the hands of divers *English-Men*, naming them, and so had process against them, who came in, and pleaded; that in regard this depredation was done by a Stranger, and not by the Subjects of the King; and therefore they ought not to be punished, in regard that the *Stat. of 31 H. 6. Cap. 4.* gives restitution by the *Chancellor, in Cancellaria sibi vocato uno Judice, de uno Banco vel altero*; and by the *Stat. of 27 Ed. 3. Ca. 13.* that the restitution may be made in such a case upon proof made, by the *Chancellor* himself without any Judge; and upon that case it was resolved, *Quod quisquis extraneus, &c.* who brings his Bill upon this *Stat.* to have restitution, *debet probari quod tempore captionis fuit, de amicitia Domini Regis*; and also *quod ipse qui eum cepit & spoliavit, fuit etiam sub obedientia Regis, vel de amicitia Domini Regis, sive Principis querentis, tempore spoliationis, & non inimicus Domini Regis sive Principis querentis, quia si fuerit inimicus, & sic cepit bona, tunc non fuit spoliatio, nec depredatio, sed legalis captio; pro ut quilibet inimicus, capit super unum & alterum*; the Judgement of which case was held to be Law, and thereupon the Judges delivered their opinions, that the *Morocco Ambassador* could not be proceeded against as a *Pyrat*.

Fullbr. 3. part.  
fo. 28. cited in  
Marthe's Case.

(16) In the time of *Philippe. the Second of Spain*, the *Venetian Ambassador in Madrid*, protecting one *Bodovario a Venetian* an offender, that fled into his house, and denying the *Corigidor* or *Justices* to enter his house, where the Ambassador stood armed to withstand them, upon complaint made, the Ambassador was removed unto another house, until they had searched and found the offender, then conducting back the Ambassador with all due respect, a Guard was set upon his house to stay the fury of the enraged People; the Ambassador complaining to the King, he remitted it to the *Supream Conncel*: they justified the proceedings, condemning *Bodavario* to loose his head, and other the Ambassadors Servants to the Gallies,

all which the King turned to Banishment, and to satisfy the most *Serene Republique*, sent the whole process to *Inigo d' Mendoza* his Ambassador at *Venice*, and declaring by a publique Ordinance unto that *State*, and all other Princes, *That in case his Ambassador should commit any offence unworthily, and disagreeing to their qualities and professions of Ambassadors, they should not enjoy the Privilege of those Officers, but would refer them to be judged by the Laws of that Prince or States where they then resided, and where they had injured, it was a great and a noble Saying.*

Sir Henry  
Wootton fo. 211.  
stat. Crif.

(17) In the Year 1568, *Don Gubernon d'Espes* was ordered to keep his house in *London*, for sending scandalous Letters to the Duke de *Alica* unsealed, and in 1586 *Don Bernardino de Mendoza*, was restrained first, and after commanded away.

Vide Sir Robert Cottens  
posthum. and  
the Proposir,  
to K. James.

(8) The manner of proceeding against them, has been conceived necessary to be that some of the Chief Secretaries of State were sent to the Ambassadors, and by way of advice, that understanding that the Common People having received notice of, &c. "And that they cannot but conceive a just fear of uncivil carriage towards their *Excellencies* or their followers, if any the least incitement should arise, and therefore for quiet of the State, and securing of their Persons, they were bound in love and respect to their *Excellencies* to refrain as well themselves as followers, untill a further course be taken by legal examination, where the aspersion began, the same being in their opinions the best and the only way to prevent the danger, &c.

Sometimes, if the *Parliament* be sitting, the King acquaints the *Lords*, and then departing, who having had conference with the *Commons*, conclude of a *Message* to be sent to the Ambassadors, (either by requiring an account of the matter or confining of them) the Persons to be sent, the two *Speakers* of both *Houses*, with some convenient number of either, having their *Maces*, or *Ensigns* of Offices born before them to the Ambassadors Gates, and then forborn; and then requested speech with them, let them know that a relation being made that day in open *Parliament* of, &c. they were deputed from both  
G 3 Houses,



*Houses, the Great Council of the Kingdom, to the which by the fundamental Laws of this Nation, the Chief care of the Kings safety, and the Publique Peace and quiet of the Realm is committed; and that' they were no less the High-Court of Justice, or Supersedeas to all others, for the examining and punishing all attempts of so High a nature as, &c. if it carry truth, and having executed their Commission, concluded that the Houses, to show that reverence which they bear unto the dignity of his Master, by their Message, they two that never are employed but to the King alone, were at that time sent, &c. and if the Houses shall upon return of their Speakers conceive their answer (if it be a matter that requires it) are such as may justly deserve their being confined, they then make an address to his Majesty to confine them to their Houses, restraining their departure untill the Prince or State, whom they represent, be acquainted with their offence: And so it was done in 44 H. 3. to the Popes Legates in England, and 28 E. 1.*

*The Parliament not sitting the Secretaries of State may signify the like, if occasion, &c.*

*The opinion of the Lord Coke 4. Inst. 153, &c.*

XI. If a Foreign Ambassadors, being a *Prorex* commits here any crime which is *contra jus Gentium*, as Treason, Felony, Adultery, or any other crime which is against the Law of Nations, he loseth the Priviledge and dignity of an Ambassador, as unworthy of so high a Place, and may be punished here as any other private alien; and not to be remanded to his Sovereign but of courtesy.

X. But if any thing be *malum prohibitum* by any Act of Parliament, private Law or Custom of this Realm, which is not *malum in se jure Gentium*, nor *contra jus Gentium*, an Ambassador residing here, shall not be bound by any of them, but otherwise it is of the Subjects of either Kingdom; for if a French Merchant or Spanish Merchant trades or imports any prohibited Goods, he must at his peril observe the Laws of England; and so it was adjudged *Pasc. 33 Eliz.* in the Exchequer, *Tomlinson, qui tam versus Henry de Vale & al.* upon the Stat. of 19 H. 7. Ca. 21. but if an Ambassador imports any prohibited Goods *econtra*.

*In Causes Civil.*

XI. The Office of an *Ambassador* does not include a procreation private but publique, for the King his Master, nor for any several Subject otherwise then as it concerns the King and his publique Ministers, to protect them, and procure their protection in forreign Kingdoms, in the nature of an *Office* and *Negotiation of State*; therefore their Quality is to Mediate and prosecute for them or any one of them, at the *Council Table*, which is as it were a *Court of State*; but when they come to settled Courts, which does and must observe essential formes of proceedings, *scil. processus legitimos*, they must be governed by them: And therefore in the Case of *Don Diego Serviento de Acuna*, Ambassador Leger for the King of Spain, who libelled in the *Admiral Court* as *Procurator General*, for all his Masters Subjects, against one *Jolliff* and *Tucker*, and Sir *Richard Bingley*, for two Ships and their lading of divers kinds, of the Goods of the Subjects of the King of Spain generally, and not naming of them *adducti ad Port de Munster*, in the Preface of the Libel generally against them all, and then proceeds and charges them severally thus; That *Jolliff* and *Tucker* Captain *Pirate*, in alto *Mare bellico dictas Naves aggressi sunt, & per vim & violentiam*, took them, and that they were *adducti in partes Hibernie*, and that they came to the hands of Sir *Richard Bingley*, and he converted them to his own use, (not saying where) and refuseth to render them being required, it was there held that a *Prohibition* should go, for the matter is tryable meerly at the *Common Law*, and that such a *Procuracion* was not good. Hobart f. 71.

*Don Alonso de Valesca* Ambassador from the *Catholique* King, attached Tobaccos at Land here, which one *Corvero*, a Subject to the King of Spain, brought hither, and the Ambassador by his Libel supposed to belong to his Master, as Goods confiscated, as all others his Goods were, Sir *John Watts* the Plaintiff in the suggestion, pray'd a *Prohibition*, which was granted accordingly, for the property of Goods here at Land must be tryed by the

## Of Ambassadors.

*Common Law*, however the property be guided; and it was likewise rul'd, that if any Subject of a Foreign Prince bring Goods into this Kingdom, though they were confiscate before, the property shall not be questioned but at the *Common Law*. *Don Alfonso vers. Cor-*

\* *Distingui*  
*ferme ac in re*

*solent crimine. vero*

*Vide Parutam*  
*L. 10. ubi Rex*

*Gallie hanc ab*

*causam iratus*

*pacatur. Vide*

*eundem lib. 11.*

† *Grot. de jure*

*Belli ac Pacis*

*L. 18. §. 4, 5, 6,*

*7.*

*Rex facisne*

*metu regium*

*nuntium populi*

*Romani Quiri-*

*tum vasa com-*

*mitesque meos:*

yet an Eject-

ment hath

been brought

and left at

the house of

the Ambassa-

dor, and it

was allowed

good, and con-

ceived no

breach of their

priviledge in

the case of

*Monsieur Cob-*

*bert, for York*

*House. Mich.*

*28 Car. 2. in*

*Banc. Reg.*

† *Grot. de jure*

*Belli ac Pacis*

*lib. 2. cap. 18.*

\* *Co. Inst. 4.*

*157.*

Certain it is that none dareth presume to meddle either with

their Persons, Goods or Servants, without leave had, the contempt of which has

been punish'd with imprisonment.

*Libell* by *Don Pedro Surega* Ambassador for Spain.  
XII. Whether an Ambassador hath Jurisdiction over his own Family, and whether his House be a *Sanctuary* \* for all that fly into it, depends upon the concession of him with whom he resides, for this belongs not to the Law of Nations †; and it hath been seen that an Ambassador hath inflicted punishment on his own Servants and Vassals, as the *Muscovite* did here in England; but for Fugitives that fly into their Houses, nay, their own Servants, if they have greatly offended, cannot be drawn forth by force, without a demand and refusal; which then done, it is then become as an offence in them.

XIII. Most certain by the *Civil Law*, the movable Goods of an Ambassador, which are accounted an accession to his Person, cannot be seized on, neither as a pledge, nor for payment of a debt, nor by *Order* or *Execution of Judgement*, no nor by the King or *States* leave where he resides; (as some conceiue) for all coercion ought to be far from an Ambassador, as well that which toucheth his necessities as his Person, that he may have full security; if therefore he hath contracted any debt, he is to be called upon kindly, and if he refuses, then *Letters of Request* are to go to his Master; † so that at last, that course may be taken with him as with Debtors in another Territory; to some this may seem hard, yet Kings, who cannot be compelled, want not creditors; but the Lord *Coke* seems to be of another opinion, \* for as to Contracts and Debts that be good *Jure Gentium*, he must answer here.

Certain it is that none dareth presume to meddle either with their Persons, Goods or Servants, without leave had, the contempt of which has been punish'd with imprisonment.

XIV. If an Ambassador commits any private outrage against one of the Princes Subjects, with whom he resides,

resides, unless it be to defend the Dignity of his Charge, or of his Master, it has been conceived by some not to be justifiable before the Prince with whom he resides; for, say they, there is a great difference between the *Dignity* and *Authority* of the Prince in the Countrey of another Sovereign; for, say they, he may well retain his *Dignity*, but not his *Authority*: usually injuries of that nature being done, they have admitted debates at a *Council of State*, where the Sovereign, with whom the Minister of State hath resided being satisfied, that reparation ought to be made to the party injured, he hath been ordered or at least requested, to comply with the same.

XV. But on the other hand, if any private outrage be committed by the Subjects of that Prince with whom he resides upon his Person, the offenders may be subjected to punishment: and the Queen of *Sweden* having made the *Incomparable Grotius* (after he had escaped by Providence out of Prison, & by a greater from his Country-Men) her Ambassador for that Crown with *Lewis the 13th.* with whom he resided at *Paris*, coming one day from *St. Germans*, the *Secretary of Ceremonies* being in the Coach with him, it chanced that in one place as they passed, a great number of People were in the way seeing of an execution, his *Postillion* and *Coach-man* driving boldly through the company the *Archers* then attending the execution with short pieces, (concerned somewhat angrily that the execution was disturbed) made after the Coach, shot his *Postillion* and *Coach-man*, and through the Coach, even through his hat: the matter coming to be examined, the King ordered 3 or 4 of them to be hang'd, but that *Good Man* first pardoned them himself, and then obtained the King's.

*Barkseate in  
memor. Grotii.*

XVI. The Republique of *Venice* imployeth generally more Ambassadors abroad then any other State, and they are as other Princes; be *Ordinary* and *Extraordinary*; the Commission of the Ordinary continueth for 3 years, but he which resides at *Constantinople* is not call'd Ambassador, but *Bailio*, residing there perpetually, and that Republique allowes him a greater provision to support his *Grandeur*, then to any other, and by the Laws of  
*Venice.*



*Venice* whatsoever he expends is allowed him upon his accounts, without any examination; the which no other of their publique Ministers of State have like priviledge.

† Bodinus de  
Repub. l. 3.

By the Laws of *Venice* there can be no Extraordinary Ambassador imploy'd, unless they have been Ambassadors formerly, and upon their return are strickly examined of their comportment in their Legation, and are to discover † what Presents they have received from the Prince or State to whom they are sent, the concealment of which is of a dangerous consequence.

\* Jac. Aug.  
Zhuarius l. 27.  
In Vita Augu-  
stini Barbadi-  
Duke of Ve-  
c & An. 1 86.

Nor may any of their Ambassadors receive any preferment \* from any other State during their Legation: The Patriarch of *Aquila* dyed, and *Hermolao Barbaio* being there Ambassador for that Republique, the Pope conferred on him that Ecclesiastical Dignity, and made him a Cardinal, which being known at *Venice*, notwithstanding he was a Person of great desert, and had given notice to the Senate, rich, well allied, and had good Friends, they sent expresse command that he should resign the Patriarchship, otherwise they would take from his Father the Procuratorship of *St. Marke*, and confiscate all his Estate.

Paulus Paru-  
ta in Hist. Ve-  
nice lib. 7.

But if such Ambassadors have received any Present, Gift or Reward from any Forraign Prince or Republique, and such Ministers of State are thought worthy of retaining the same, such a grace must pass by the suffrage of the Senate, to oblige them more to the benivolence of the Republique, then to the bounty of any Forraign Prince.



CHAP.

## CHAP. VII.

### Of the Right of delivering Persons fled for Protection.

I. *where Superiors may become culpables for the crimes of their Subjects.*

II. *Of punishment, in whom lodged, and where offences to another Prince seem to be excepted.*

III. *What is meant by the words delivering up, and how confirmed in divers Countreys.*

VI. *To what crimes it can extend to.*

V. *Such Persons have been refused to be delivered up, and on what reason deny'd.*

VII. *Admitting not compellable, whether he ought voluntary.*

VIII. *Of Persons running away with the Revenue, wheter to be delivered up by the Persons into whose Countrey they fled.*

I. **F**athers are not bound for the fault of their Children, nor Masters for those of their Servants; nor Princes for the Actions of their Subjects, unless they become partakers in the crime; the which may be done in two respects, by sufferance and receipt; therefore if Princes shall suffer their Subjects by Pictures or Libells to abuse another Nation or *Common-wealth*, it is the same as if they should authorize it. *Brutus* to *Cicero*, *How can you make me guilty? yes, well enough, if it were in you to hinder it; but receipt may admit of some further scrutiny.*

II. *Common-wealths* being instituted, it was agreed that faults of particulars, which do properly belong to their own society, should be left to themselves and their Sovereigns, to be punish't or connived at, as they judged most fit.

Yet that *Right* is not so absolute left to them, but offences, which tend to the destruction of Society or Government, whereof Treason is the chiefest, may seem to be excepted; the which if a Subject shall commit an act, tending to the subversion of his Sovereign's Government, the same is an offence that's subject to an universal punishment, *i. e.* it is to be punished every where, and the

Governours

*Zeno* interceding for the *Magnets* to *T. Quintus*, and the *Legates* with him besought them with tears; *ne unius amenitiam civitati assignarent, suo quemque periculo facere.* *Livy* lib. 40.

## Of Protection by the Laws of Nations.

Governours into whose Territory such fly, seem to have a Right of prosecuting for the offence: in civil actions, which tend to Commerce that supports Society, the Subject of forraign Subjects having justly contracted in their own Countrey, may obtain justice in another by a stronger reason it is thought that Princes or Republicques that have received publique injuries, have right to require punishment for the indignity that is offered them, at least for that which tended to the subversion of their Governments.

III. The question is illustrious, opinions grounded on several great Presidents have been both waies, produced; generally it hath been held that those Kingdoms where the offenders are fled, ought to do one of the two, either punish them according to their deserts being called upon, or leave them to the Judgement of the offended State, others the contrary; most certain it is by the *delivering up*, is understood, to leave him to the legal Judgement of that Prince or State, whom he hath offended: And such was the Declaration of *Ferdinando* King of *Spain*, who had been often requested by *Henry* the Seventh to deliver up *Edmund de la Poole* Earl of *Suffolke* his Subject, then fled for protection to that Prince's Countrey, but was alwaies refused; but being continually importuned by promises that he should not be put to death, caused the Earl to be delivered up to him, who kept him in prison, and construing his promise to be personal to himself, commanded his Son *Henry* after his decease to execute him, who in the fifth Year of his Reign upon *old blood* performed the same: But the malice of that Politique Prince the Father, and the uncontrollable Will of the Son are Presidents, but of small force; the example of which not long after gave the *French King* occasion to beware of trusting the latter with a Subject of his on the like occasion, for *Cardinal Poole* not many Years after, coming Ambassador from the *Pope* to the *French King*, they both being then in amity, and *Henry* the Eighth in League with the latter, but in enmity with the first, requested to have the *Cardinal* delivered up; but could not prevail, being doubty armed as the Ambassador of a Sovereign Prince (for such

For the knowledge of the cause ought to proceed the dedition; *non decet homines dedere causa non cognita* *Plutarch* in his *Romulus*.

Attainted by Act of Parliament 12 H. 7. Co. Inst. f. 180.

5 H. 8. vide Lord Herberts Hist. of Henry the Eighth. *Pipin* receiv'd and would not deliver up those that fled to him out of *Newstria*, oppressed by *Tyranny*. *Fredegar. in reb. Pep. an. 1188.*

is the Pope) and in the Territory of a Forreign State.

The *Israelites* require of the *Benjamites* to deliver'd up the wicked Men; the *Philistians* *Sampson*, *Cato* gave his vote that *Cesar* should be delivered to the *Germans*, \* Yet out of for spoiling them without just cause; nor are nocent Churches be- Persons injured, if they are are either deliver'd up, or yond Seas for punished; yet does it not thence follow that they must private offen- ces, which are be delivered up or punished: the *Romans* delivered up those that had done violence to the *Cathaginian* Am- bassadors. offenders have been taken out in *Lusitania*, *Ferdinand* Lord *Cham-berlain* was taken by force out of the Church and burnt, for forcing a Noble Virgin. *Mariana lib. 11.*

IV. But then and as in this last, so in all other the offender must have committed some publique offence, \* as Treason; for most certain it extends not to private injuries, because there is no President that ever at a War was begun for such, though they may contribute much, but for those which tends to the subversion or ruine of a Countrey, they often have been delivered up; *Jugurtha* of *Bocchus* in *Salust*, *So shalt thou at once free us from the sad necessity of prosecuting thee for thy error, and him for his treason.* And by most Writers it is agreed, *Charles Duke of Burgundy* delivered up to *Lewis the 11th.* the Earl of *St. Paul*, *Constable of France*, who that such offenders must either be delivered up or punished, the election is left to their choise, into whose Territory they are fled; though some have held, that in case of protection † the Sanctuary for such unfortunate Persons, Princes do make their Countrey an *Asylum*.

flying to some of his own Cities, obtained Letters of Safe-Conduct to come and commune with the Duke, in order to the making his peace with the King, but the Duke after he had him in custody, delivered him to the King of France, who immediately after cut off his head. *Phil. Comines lib. 4. c. 12.* † *Ludovicus Pius*, the Emperor, received those that fled to him from the *Roman Church*, as appears by his Decree anno 817. and *Luther* himself did not want Princes to protect him from the fury of *St. Peter's Chair*. *Vide his Colloquiums printed in London an. 1663.*

T. *Quintus Flaminius*, sent Ambassadors to *Prusias* King of *Bithinia*, for the procuring the delivering up the Brave but unfortunate *Hannibal*, who accordingly being seized on, *I will now*, saies he, *deliver the Romans of that fear which hath so many Tears possesst them; that fear which make them impatient to attend the death of* *Livy: vide Sir Walter Raleigh an old Man: This Victory of Flaminius over me, which lib. 5. cap. 6.* *am disarmed and betray'd into his hands, shall never be* *§. 2.* *numbred*



A

numbered among the rest of his Heroical deeds: No, it shall make it manifest to all the Nations of the world, how far the antient Roman virtue is degenerate and corrupted; for such was the Nobleness of their Fore-Fathers, as when Phyrrius invaded them in Italy, and was ready to give them Battle at their own doors, they gave him knowledge of the treason intended against him, by Poyson, whereas those of a latter race have imploy'd Flaminius, a Man who hath heretofore been of their Consuls to practise with Prasias, contrary to the honour of a King, contrary to his faith given, and contrary to the Lawes of Hospitality, to slaughter or deliver up his own guest.

V. What ever the opinion of those Writers have been, the practise of latter Ages have seemed to incline otherwise. Queen Elizabeth demanded Morgan and others of her Subjects fled into France, that had committed Treason against her; the answer of the French King was, *Si quid in Gallia machinarentur, Regem ex jure in illos animadversurum, sin in Anglia quid machinati fuerint Regem non posse de eisdem cognoscere, & ex jure agere; omnia Regna profugis esse libera Regum interesse, ut sui quisque Regni libertates tueatur, imo Elizabetham non* ita pridem, in suum Regnum Mountgumerium, Principem *Condeum, & alios e Gente Gallica admisisse, &c.* and they were never delivered up; but the like was not returned by the King of Scotland, for he promised that he would transmit Ferniburst and the Chancellor too, if they were convicted by a fair Tryal; the Cry of the late ROYAL MARTYR's Blood justly procured some of those Regicides to be delivered up by them of Holland.

34 Elizabeth  
Camden f. 35.

Vide Camd.  
anno 1585.

An. 1660.

That politik  
Princes gave  
the Scots a  
more equita-  
ble answer,  
when they  
demanded  
Bothwell, she  
answered, that  
she would ei-  
ther render  
him up, or

VI. Most certain it is if War be threatned to a Nation or People, if they deliver not up the offender, though perhaps he is innocent, and that such is the malice of his enemies that they know they will put him to death, yet he may be deserted; especially if that Nation or Kingdom is inferior to the others; but then the same ought not to be done rashly: The Italian Foot that forsook the unfortunate Pompey, before all was lost, being assured of Quarter from the Victorious Cesar, were condemned by most that reported the Story of that day.

send him out of England, Camden annb 1593.

Pope

*Pope Alexander* (in that mortal Feude between him and the *Emperor Frederik*, who favoured *Oſtavian* the *Antipope*) fled disguised to *Venice*, the *Duke* and *Senate* being jealous that the *Emperor* would demand him, sent an Ambassy to the *Emperor* to endeavour a Mediation and Peace, which was no sooner offered, but the *Emperor* break forth into a rage, bidding them go home, saying; 'Tell your Prince and People, that *Frederik* the *Roman Emperor* demands his Enemy, who is come to them for succour, whom if they send not presently bound hand and foot with a sure Guard, he will proclaim them Enemies to him and the whole *Empire*, and that there is neither Alliance or Law of Nations which shall be able to free them from revenge for such an injury, to prosecute which, he is resolved to overturn all Divine and Human Laws, that he will suddenly bring his forces before their City, and contrary to their expectation, plant his *Victorious Eagles* on the Market-place of *St. Marke*. This Message being faithfully delivered, the *Senate* decreed Arms, Arms; and while they were preparing, news was brought that *Otho*, the *Emperor's* Son and General of the *Casarian* Fleet, was entered the *Gulph* with 75 Gallyes, the most valiant and religious *Tebastiano Cyani* resolved to meet him, and having encountered them on the Coast of *Istria*, defeated *Otho* and all his Naval forces, taking 48 Gallyes, *Otho* their Admiral and the rest either burnt or destroyed; he returned in Triumph for *Venice*, and not long after *Frederik* became converted, that *Heaven* fights the Batailles for the Innocent, and on his knees begg'd pardon of the *Pope*.

*Lewis* the 11th. of *France*, required by Ambassadors of *Phillip* Duke of *Burgundy*, the delivery up of *Sr. Oliver de la Marche*; who being a *Burgundian*, had wrot (as was conceiv'd) somewhat against the claim of the *French* to several Territories, upon a publique audience at *Lisle* they were answered by Duke *Phillip*, That *Oliver* was Steward of his House, a *Burgundian* by birth, and in no respect Subject to the *Crown of France*; notwithstanding if it could be proved that he had said or done any thing against the Kings Honour, he would see him punished according as his faults should deserve.

But

*Hist. Rep. Ven.*  
*in Vita Teba-*  
*stiano Cyani*  
*Duke of Ven-*  
*nice An. 1164.*

*Phil. Comines*  
*lib. 1. cap. 1.*

But admitting that such an Innocent Person ought not to be delivered up, whether he is bound to yield himself, by some it is conceiv'd he ought not, because the nature of Civil Societies, which every one hath entered into for his own benefit, doth not require it, from which it follows that such Persons are not bound to that by right, properly so called, it doth not follow, but in charity he seems bound to do it; for there be many offices not of proper Justice, but of love, which are not only performed with praises, but also cannot be omitted without blame; and such indeed is the act of such a Persons voluntary yielding up himself, preferring the lives of an Innocent multitude before his own. Cicero for

*Idem de finibus 3. Vir bonus & sapiens, & Legibus parens, & civilis officii non ignarus, utilitati omnium plus quam unus alicujus aut sue consulit.*

*P. Sextus, If this had happened to me sailing with my Friends in some Ship, that Pyrats surrounding us should threaten to sink us, except they would deliver me, I would rather have cast my self into the Sea, to preserve the rest, then to bring my Friends either to certain death, or into great danger of their life: The Request of the Noble Strafford is fresh in our memories.*

And in Livy there is a most excellent saying of some Molossians, *E-quidem pro Patria qui lethum oppetissent sepe fando audivi: qui Patriam pro se perire equum censerent, hi primi inventi sunt. Livy lib. 45.*

VII. But whether such an Innocent Person may be compelled to do that which perhaps he is bound to do, may be a question; Rich Men are bound by the precept of Mercy to give alms to the poor; yet cannot be compelled to give: It is one thing when the parts are compared among themselves; another when Superiors are compared to their Subjects, for an equal cannot compell his equal: but unto that which is due by right strickly taken; yet may a Superior compell his Inferior to things which vertue commands; in a famine to bring out provisions they have stored up, to yield him † to death that deserts his Colours, or turns coward to mulct those that wear excessive apparel: \* And the like Plutarch Phocion, pointing to his dear Friend Nicocles, said, *Things were come to that extreameity, that if Alexander should demand him, he should think he were to be delivered up: It judicemus esse paucos aliquos mala ferre, quam immensam multitudinem.*

† Leg. Desert:

\* Co. Inst. 3. fo. 199.

Plutarch Phocion. Fides agi visa deditos non prodi. Livy lib. 7. Satius

hath

hath seem'd that such an Innocent Person might be deserted and compelled to do that which Charity requires; but the late ROYAL MARTYR seem'd of another opinion, when he came to dye, in the case of the *British* *Proto-martyr* *Strafford*. The Son of Pompey was so worthy a Son of so great a Father, that he contended

with *Anthony* and *Augustus*, about the *Empire of the World*; this *Pompey* entertaining *Anthony* and *Augustus* in his Gally; the Captain which commanded it, demanded leave of him to weigh Ancor and to carry away his guests, and to make prisoners of his Rivals: he answered him, that he ought to have done it without telling him of it, and should have made him great, without having made him forsworn: certainly, an honest Person will never be of the mind of this Captain; therefore in such extremities, *Councillors* either for high advantages, or in the great necessities of their *Prince*, should serve their Masters with their Estates and Goods, but not with their Honour and Conscience.

VIII. Persons that have wrong'd or defrauded Kings of their Revenue, especially in *England*, upon Letters of Request to those Princes, whether they have fled, have been delivered up.

Some *Florentine* Merchants of the Society of the *Striscobaldi*, being made Collectors and Receivers of the Kings Customs and Rents in *England*, *Wales*, *Ireland* and *Gascoigne*, running away with those Moneys, together with all their Estates and Goods for *Rome*, the King sent his Letters of Request to the *Pope*, desiring that they might be arrested, their Persons and Goods, and sent over to satisfy him the dammages he and his Subjects had sustained by them, promising not to proceed against them to the loss of their limbs and lives. Upon which Letters the *Pope* seized on their Goods, and not long after the King Writ for the seizing of their Persons, for answering of other frauds and injuries. *Rott. Rome A. 1. 4 E. 2. M. 17. Dorso.*

The like was done for one *Anthony Fazons*, who had received 500 l. of this Kings Moneys, and running away with it to *Lorraine*, the King writ to the same Duke, desiring that search might be made, and his Person seized upon in every place within his Territories, till he should satisfy the said 5000 pounds. *Rott. Rome 4 E. 2. M. 16. 4 Dorso. M. 31. Dorso. pro Reg.*



## CHAP. XIII.

## Of Contribution pay'd by Places Neuter, to both Armies in War.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Considerations general, touching the same, and the chief matters that are objected by those that scruple therat.</p> <p>II. The case stated generally in the question propounded to our Saviour of paying tribute to Caesar.</p> <p>III. In the payment of Contribution to an Enemy, what is necessary to be distinguisht in the beginning of a war.</p> <p>IV. Of a second distinguishment drawn out of the first, of such payments, when a War is actually formed.</p> <p>V. Where a Man payes, but mislikes the cause, whether excusable, the war not yet actually formed in the place.</p> | <p>VI. Where a Country is fully possess'd, whether payment then is lawfull.</p> <p>VII. Of the State of those that live on Frontiers, their condition considered as in reference to procure their peace by Contributions.</p> <p>VIII. Of interdiction by him to places from whom saith is owing, Contribution notwithstanding being pay'd, whether the same creates an offence in them.</p> <p>IX. Of the genuine construction of such interdictions according to the true intention of the same.</p> <p>X. Of the impunity and punishment that such innocent offenders may be subjected, in case of being questioned for the contempt by their right Governours.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **T**He most excellent Grotius having most incomparably treated on, and cleared all the important objections against a just War, together with the incidents of the same, yet this one main of Contribution or paying to both Armies, whether lawfull, he has not touched in any other words but these, *Quod sub tributo utrique parti prestando factum diu in Belgico, Germanico, bello nuper vidimus; estque id consentaneum mori veteri Indorum*:† and so cites a saying in Diodorus Siculus,\* of the Peace that those People maintained in their possessions by reason of such Contributions, but to many Persons that instance of this without further scrutinizing, proves insufficient; for that there are many who not finding this liberty in their consciences, unnecessarily choose rather to give up their Bodies to restraint and to abandon their whole means of

\* Grot. de Jure Belli ac Pacis lib. 3. cap. 12. §. 4. n. 2.  
† Lib. 2.

of substance in this World, both for themselves and their Children, (which ought not fondly to be done, *unless we would be worse then Infidels*, as *St. Paul* saith) they ground their resolution on this reason, that they know not whether the Monies they give may not furnish to the destruction of many Innocents, and perhaps the just Magistrate; yea, and the total subversion and ruin of their Countrey, Liberty and Religion: and therefore though Men give and bestow what they please with their own, yet in such cases they may not; therefore it may not be impertinent for to examine whether these be necessary scruples in themselves, and such as admit of no exception of liberty, or whether those scruples be reasonable, or indeed meer scandal.

II. The *Scribes* and *Pharisees* sought two waies to entrappe *Our Saviour*; one was as if he had blasphemously taught a new Religion, and a new God, (*viz.* himself) they hoped the People would be provok't to stone him for this, according to the *Hebrew Law*: \* *Deut. 13.* The other was, to bring him within the compass of *Treason*, as if he could not lead great Multitudes after him, without trayterous designs; but this gin failed too, because the Multitudes which followed him, was alwaies ready to defend him. However, when he was at *Hierusalem*, where the *Roman Troops* and *Prætor* were, they thought they had him sure, by propounding this subject to him:

*Is it lawfull to pay Tribute to Cæsar?* which was as much as to say, We, who are descended from *Abraham*, and are the peculiar People, to whom God hath given the large Priviledges of the Earth at home, to bath our selves in Rivers of Milk and Honey, to have full Barns and many Children; yea, that GOD himself will be adored in no other place of the World but at this our *Hierusalem*, and that abroad we should triumph over the *Barbarous* and uncircumcised World by virtue of that *Militia*; which he never ordered for any but our selves; how are we then in duty or conscience to submit now to the Ordinances of the *Uncircumcised Romans*? or what right can he have to exercise supream Jurisdiction over us, the priviledged Seed of *Abraham*, by levying of

taxes on our Estates and Lands, which GOD himself laid out for us, by which means the *Emperor* and *Senate* hold this very Temple in slavery, and insult over our very Consciences and Religion, by defiling our very Sacrifices with the mixture of impure Blood; which as they are the price of our Blood, and a Tribute far above *Cæsars*, (payable in no other place but this Temple, which GOD himself built) so our Blood ought not to seem too dear to be sacrificed for the liberty of these; and though the *Roman State* could pretend, yet what can this *Cæsar* pretend? every Man's Conscience knows that it was but the other day he usurpt over the *Senate*, in which resides the true Jurisdiction of *Rome*; and if that were otherwise, yet how can he pretend to a Title, unless poyson be a pedigree or violent usurpation, a just Election, by which he who is but the greatest Thief in the World, would now pass for the most Sovereign and Legislative Prince? How then are we in conscience obliged to pay Tribute to this *Cæsar*? Though those Lawyers thought in their Consciences that they were not to pay it, and that *Our Saviour* likewise, as *Jew*, thought so too; yet they supposed he durst not say so much in the crowde; nor yet deny it by shifting it off with silence, lest the *Roman Officers* should apprehend him: But when *Our Saviour* shewed them *Cæsar's* Face upon the Coyn, and bad them *Render to Cæsar that which was Cæsar's, and to GOD that which was GOD's*: His answer ran quite otherwise, not as some would have it, that by a subtilty he answered not to the point proposed, for then the sense of the whole Text would sound very ill in such tearms, *viz.* If there be any thing due to *Cæsar*, pay him it, and if any thing is due from you to GOD, then pay it likewise. This had been a weakening of GOD's Right for *Cæsars*, and to have left a desperate doubting in a necessity: 'Tis beyond all cavil that *Our Saviour's* opinion was positive for paying of Tribute to that *Cæsar*; because *de facto* he did pay it, and the plain reason of it appears evidently in this his Answer: *Cæsar's* Face was upon the Coyn, that is to say, *Cæsar* by Conquest was in possession of that Coyn, by possessing the place where he obliged them

Matth. 22. 20.

to take it; Coyning of Money being one prerogative of Sovereign Power. †

† *Coke 3. Inst.*  
fo. 16, 17.

III. But to come more close to the question whether Contribution may lawfully be pay'd, *perferre & inferre bellum*; the one is active, and properly at the beginning of a War, and in a place where yet no War is, and where its cause only, and not its effects can be considered; in this case every thing ought to be very clear for warrant of a Man's Conscience, because of the calamities which he helps to introduce, and is in some manner the author of: the other is passive, and there where war or the power of war is actually formed, which is the case of this discourse.

IV. Secondly, we are to distinguish betwixt that which cannot be had, nor the value of it, unless we actually give it, and that which may be taken by the Law of War whether we contribute I or no.

V. Most certain it is though a War be not yet actually formed in a place, yet a scrupling conscience, which likes not the cause, may be excused in contributing to it in this one case, *viz.* if some number of Men able to take what they ask, demand (with an armed power) the payment of a certain sum to be employed in War, then in such a case, Man, whom we suppose, may pay it as a ranfome for his life, or give it as a Man doth his purse, when he is surpris'd \* in the High-way; because to this Man it is as much as if the whole Countrey were possess'd with an armed power: So several *Dutchies* and *Segnories* dependant on the *Empire*, do in the present War between them and the *Crown of France*, pay Contribution at this day,

\* 4 H. 4. 2.

But if the Person or Country be not for the time in the full possession of him, whose cause he scruples at, and that he or they have not a probable fear of extream danger, nor as probable assurance that without his help, the thing demanded nor its value can be taken from him or them; then there's little excuse remains for the act, because the very act (which his conscience dislikes) participates more of action then of passion.

VI. But where a Man or City is fully possess'd by an invading power (be the same just or unjust) from whom

*Procopius in the third of Gotth. of Totilas, when he beseiged Rome, saith, Agriculis interim per omnem Italiam nihil mali intulit, sed iussit eos ita, ut soliti erant terram perpetuo, securos colere, modo ut ipsam Tributa perferent: This, saith Cassiodore, is the greatest praise,*  
12. 15.



† 44 E. 3. 14;  
H. 4. 3.  
Co. 3. Inst. f. 68.

McC. de Brug.  
de Pace. Nic.  
Danafe.

he or they cannot fly, nor remove their substance; most certain the payment of Contribution is no gift, no more then he, (as above) who with his own hands being set upon by Pyrats or Robbers, puts his purse into their hands; for the Law calls not that a gift † nor excuses the party from taking it: And though the parties may employ the same to the destruction perhaps of Innocents, and the like; yet that is an action out of their power, that give as far as winds and tempests are, to which two, as we contribute nothing, so we cannot be scrupulous in our Consciences concerning their bad effects; nor is the same repugnant to the *Canon Law*\*, (which teaches us humanity, and the imitation of all their virtues,) and therefore persons, whose lives are innocent and harmless, will not have subjected to danger or plunder, which hardly can be avoided without Contribution or Tribute.

VII. Again, those that live on Frontiers, whose condition are more ticklish and deplorable, because they are not fully possess'd nor taken into the line of either party, these live as it were in the Suburbs of a Kingdom, and enjoy not the security or priviledges of others, yet such Persons may lawfully contribute to both, for though they be but partly possess'd by one, and by the other, in respect of their suddain abandoning them, yet both parties have the power of destroying them wholly, wherefore those former reasons which justify those fully possess'd, do also acquit the payments of those, for their conditions here is more calamitous, seeing they are really but tenants at will, expos'd to a perpetuall alarm, and that both parties wound one the other, only through their sides, as those this day that are scituate between *France* and *Germany*, for being perhaps Neuters in the War, they are in that case by the Law of Arms to shew themselves equal to both, † in permitting of passage, in affording provisions for the Armies, in not releiving the besieged.

† Exemplum  
mobile vide a-  
pud Pantam  
lib. 2. Grotius  
lib. 3. cap. 17.

VIII. Nor can the interdiction of him, to whom such ow faith and obedience any waies create the same an offence, since the declared wills of our Governors cannot make all those of our acts sips, when we obey or submit to that power, which is against our wills, (as much

much as against theirs, and it may be with more of our misery) hath divested them of the power of their rights, and deprived us of the power of their Government; and by the Laws of War, they who have overcome, should Govern those whom they have overcome; and therefore whatsoever is exacted by the Conquerors, may justly be pay'd by the Conquered.\*

And since Princes by their commands cannot change the nature of humane condition, which is subject naturally to those fore-mentioned changes; it would seem exceeding hard to oblige us to almost morall impossibilities, and though those politicall commands were as Laws, yet doubtless they ought not to be obliging; but according to the Legislative rule, which is *cum sensu humane imbecillitatis*, this is that which usually is call'd the presumptuous will † of a Governor, or the mind of a Law: for in extream necessity it is to be presumed that both their wills proceed from the rigour of what they have declared, rather than by holding to that which is their supposed right, introduce certain miseries and confusion: without receiving any benefit thereby to themselves. Nor could they of *Utrick*, and others of the Conquered Cities in *Holland*, abandoned afterwards by the *French*, entirely preserved from destruction, be condemned by their *Confederates*, for the sums by them promised to the Enemy for the preservation of the same.

Neither are such Commands or Interdictions without their sense and profit, though they be not positively obeyed, \* for thereby Governors shew to all the world, that they renounce no part of their right; no, though it be there where they cannot exercise any part of their just power.

IX. Now the true intentions of such Commands or Interdictions is, that the Enemy should not by any means be assisted or strengthened; but if such prohibitions should be obeyed; nay at such a time, when they and all their substance are absolutely possess'd by the Enemy; most certain such commands dash against themselves, and the one countermands the other; for if they refuse to submit in such a case, then they do that which advantages their Enemies: Because at that time they will take all, whereas in case of submission they ask but a part,

\* *Grotius de Jure Belli ac Pacis* l. 3 c. 8.

*Jura hoc tenent ut quod quisque ob tutelam corporis sui, jure fecisse existimur. † Leg. ut vim. D. de just. & jur.*

\* And that is apparently evinced, by the Laws of Leagues; for such being made, the same remains although the same King, or his successor be driven out of his Kingdom, for the right of the Kingdom remains, although he hath lost the possession.  
*Grot. de Jure Belli ac Pacis* l. 2. c. 17. § 19.

## Of Contributions in War.

X. In all Wars there are alwaies some, by whose disaffections, Enemies gain more then by their compliance, just as Physitians do by distempers.

And although, by after variety of successes, the just Governor should recover that place, which so submitted to the power of their Enemies, and for that reason should punish those that were plyable to extream necessity; yet it follows not upon that, that they who so conformed, sinned, or did that which was absolutely unlawfull; for we well know that reason of State oft calls for Sacrifices, where there is no fault to expiate: *Ostrocisme* and *Jealousy* make away those, who are known to deserve most, but in strickt right (which is the term of this question) the just governour ought to look upon them as more unfortunate then faulty.

*In Reipublicam idem est nimium, & nihil mereri.*

---

CHAR.

---

# CHAP. XIV.

## Of the Naval Military part.

- I. The advantage that Princes have by a good Commander.
- II. The love that naturally proceeds from the Mariners to those that are valiant and generous.
- III. Princes in prudence ought not to listen too much to the complaint against Commanders.
- IV. Of the faults generally considered in Soldiers and Mariners.
- V. Of the punishments that generally wait on such offenders.
- VI. Of Drunkenness, Swearing, and other such sort of impieties, not to be suffered in Fleets.
- VII. Spies, if lawfull to use them by the Laws of Nations, but being deprehended are to suffer death; and how they are to be dealt withall by the Laws of England.
- VIII. It is not lawfull for a Friend or Neuter to relieve an Enemy, and Persons so offending, how punisht.
- IX. Ships taken as prize, the Ship papers and other matters concerning the same, are to be preserved.
- X. Of things taken and acquired in War, how the right of them becomes vested in the Captors, and how that is to be understood by the Law of Arms.
- XI. To steal the Cables or other furniture of the King of England's Ships, how punishable at this day.
- XII. Ships surrendred and voluntarily surrendred, how to be dealt with, and whether those that shall resist it, if entered by force, whether quarter may be refused.
- XIII. Ships of war generally ought not to be yielded, but if entered or disabled, whether they may not accept of a quarter, standing with the Oath called Sacramentum Militare.
- XIV. Of obeying Orders, the same ought to be punctually to be followed; and if broken, though the Act succeeds well, whether the same subjects not the actor to punishment.
- XV. of the obligation incumbent on Commanders and Souldiers to behave themselves valiantly, and the right of slaying an Enemy, where lawfull.
- XVI. Ships how obliged by the Law of Arms for the assistance of one another, and of the duty of those that have Fleets under their Convoy.
- XVII. An Enemy beaten ought to be pursued, and how far it is lawfull to slay such flying with their lives in their hands by the Laws of Arms, and how the retaking sword ought to be governed.
- XVIII. Persons exempted from the sword, by the Laws of Nature, Nations, Civil and Canon, and by the Municipall Laws of some Countries.
- XIX. Mutining how esteemed, valued and punished at this day by the practise of Armies, and by the Laws of England.
- XX. whether it be lawfull to decoy the Subjects Souldiers, or Mariners of an Enemy, to forsake his Prince or General, and to bring over his Men, Ships, or Arms, and where by Law they may be received;



## Of the Naval Military part.

received; and how such deserters may be punished by the Laws of Nations, and of England.

XXI. Of Seducers, Message Carriers and Decoyers of Souldiers, how to be handled by the Law of Arm.

XXII. Of those that shall disobey or strike their superiour Officers, how punishable.

XXIII. Of mutining, and those that shall act in the same how punished, though they have a just cause of complaint:

XXIV. Of the care incumbent on Commanders and Masters of the Great Ships, as in reference to their safety, and the punishment

of wilfull burning and destroying them.

XXV. Of the general offences at Sea, how punished.

XXVI. Court Martials how erected, and what operation their Judgements have, and upon whom.

XXVII. Judges, and Advocates, Power as in reference to give an Oath, and the Admiral's power how limited to the punishing of offences.

XXVIII. Of maimed Souldiers and Mariners, and the provisions that the Law makes for them at this day.

XXIX. Of Triumphs.

I. **A**N Excellent Generall is an evidence of the Fortune of a Prince, and the Instrument that occasions the happiness of a Kingdom; and therefore when GOD makes choise of a Person to repair the disorders of the World, or the good of a particular State, then is his care shewed in the furnishing him with necessary Principalls to undertake great matters; the thoughts are put in his Soul by that eternall Commander to execute, he troubles and confounds his Enemies, and leads him as by the hand to Victories and Triumphs: And one of the greatest expedients whereof he serves himself for this purpose, is to raise unto him excellent Men, both in Courage and Conduct, to whom he communicates his care, and who help him to bear the weight of Affairs. Alexander had never conquered Asia, or made the Indies to tremble, but for Ephestion, Parmenio and Clytus; Caesar gained many a Bataill by his Lieutenants, and the fairest Empire of the World, which ambition and evil of the times had divided into 3 parts, was reduced under the Dominion of Augustus, by the valour of Agrippa; Justinian triumphed over Persia, and destroyed the Vandalls in Affrica; and the Goths in Italy, by the aid of Belisarius and Narcete: And it is most certain, that Noble Commanders are the Glory of their Princes, and happiness of the People; on the other hand, base cowardly and treacherous Generals, are the shame of the one, and the despair of the other.

II. Hence

I I. Hence it is that Souldiers and Mariners draw their lines, either of love even to the mouth of Canons with a good Generall, or mutiny and hate to the main yard end against one that is bad, for to obey them who are not their Sovereigns when they do them hurt, when they insult and are cruell in cold blood, and base, cowardly, or treacherous in Bataill, is a sad necessity for them, and a hard essay of patience; yet must they be obeyed, and the Souldiers and Mariners must not rebell or repine, but submit till the Sovereign redresses the misfortunes.

III. Again, *Princes* ought not to listen too much to the mutinous demands of the *Crew*, or any others, whose ambition watches their ruin, whereby to conceive anger against this *Commanders*; for it is easier to purge out the choler and discontent that is got under the hatches, then to provide *Commanders of Conduct*, Courage and Faithfulness to govern their Expeditions. *Bellisarius*, that most excellent Commander, who had no other crime then his *Reputation*, and was not culpable, but that he was powerfull, having conquered *Persia*, subdued *Africa*, humbled the *Goths* in *Italy*, lead Kings in Triumph, and made appear to *Constantinople* somewhat of *Old Rome*, an *Idea* of the Antient Spendor of that proud *Reipublicque*; after all his Eminent Services, this *Great Person* is abandoned to *Envy*, a suspicion ill grounded distroys the value of so many Services, and a simple jealousy of *State* wipes them out of the memory of his Prince: but he rests not there, for the demeanor had been too gentle, if cruelty had not been added to ingratitude; they deprive him of all his Honours, they rob him of all his Fortune, they take from him the use of the Day and Light, they put out his Eyes, and reduce him to the company of Rogues, and the miserable *Bellisarius* demands a charity, even that *Bellisarius* the Chiefest General of his Age, and the *Greatest Ornament of the Empire*, who after so many Victories and Conquests, accompanied with so high and cleer a Virtue, and in the midst of *Christendom*, reduced to so abject and low a misery.

Nor was this cruel and hasty reckoning of *Justinian* let slip, without a cruel payment, for *Narces*, who was

*Procopius Hist. Vandall, in Vita Bellis.*

*Vide Sir Walter Raleigh l. 5. c. 6. s. 2. And in that whole Paragr. the ingratitude that hath been shown by Princes to many a Brave and Noble General & Commander, there particularly enumerated.*

as well a Successor in merit as in Authority to *Belisarius*, who having notice of a disdain, conceived likewise against him upon a single complaint resolved not to expose himself as a Sacrifice to their malice; and therefore better to shake off the yolk then stay to be oppressed, soon spoiled the affairs of *Justinian*, for the *Goths* revolted, and Fortune would not forbear to be of the party, which *Narces* Follow'd, nor to find the *Barbarian*, where so Brave a Captain was engaged. Therefore, not one or many faults are to be listened to against Commanders, but patiently heard and redressed, but not to disgrace or loose them; for such having committed a fault, yet being admonished by love, may endeavour by future Services to make recompence by some Noble Exploit; but disgraced, become Instruments often of danger and ruin to their Superiors.

IV. Souldiers and Mariners faults are either proper to themselves, or common with others.

Those are common with others, which other Men fall into, and are corrected with like ordinary proceeding as other crimes of like nature, as Man-slaughter, Theft, Adultery, and such like.

Those are proper, which do properly appertain to the *Naval Military* part, and are punished by some unusuall or extraordinary punishment: As are these, not to appear at the over musters or calling over the Ship, to serve under him, he ought not to serve, to vage or wander long from a Ship-board, although he return of his own accord, to forsake his Fleet, Squadron, Ship, Captain, Commander, or Officer, to leave his standing to fly over to the Enemy, to betray the Fleet, Squadron or Ship, to be disobedient to superior Affairs, to loose or sell his Arms, or steal another Man's, to be negligent in his Officer's command or in his watch, to make a mutiny, to fly first out of the Battle, and the like, which are very frequently set forth in the Titles of the *Digest* and *Code* of Military affairs, and other like Titles, which accompany them.

*De Castrensip-  
culio, & C. de  
milit. l. 12. C.  
de arrogatione  
militaris an-  
none, & C. de  
vest. Militari.*

*Arrian*, who wrote the Life of *Alexander the Great*, observes, Every thing is counted an offence in a Souldier, which is done contrary to the common Discipline, as to be negligent, to be stubborn, to be slothfull,

V. The

V. The punishment wherewith Souldiers and Mariners are corrected, are those corporall punishments, or a pecuniary mulct or injunction of some service to be done, or a motion or removing out of their Places, and sending away with shame.

By Capital punishment, is understood for the most part death, or at least beating with *Cat with nine tayls*, as they commonly term it, *Ducking*, *Wooden-horse*, *Gauntlet*, and such like, unless happily it be pardoned, either for the unskilfulness of the Mariner or Souldier, or the mutiny of the *Crew* or Company, being thereto drawn by Wine, Wantonness, or for the commiseration or pity of the Wife and Children, of the party offending; all which is left to the discretion of the *Lord Admiral* and others the Supream Commanders, or Captains.

VI. It is necessary that in Armies and Fleets all manner of impiety should be prohibited, especially that of Swearing and Cursing; for such are sins so foolish, that they unawares help Men into damnation, rendering Men worse then beasts; by how much the more they court that vanity of sin without any of the appendant allurements; which other vitious actions are accompanied with; the same in the end teaching Men to disavow GOD in their Discourse and actions, by their intemperate and inconsiderate invoking him in their Oaths: Against such, as also against those that shall give themselves up to Cursing, Execrations, Drunkenness, Uncleanliness, or other scandalous actions in derogation of *God's Honour*, and corruption of good manners, fines and Imprisonment or such other punishment may be inflicted on them, by a *Court Marshall*, \* which is now reduced to the forfeiture of one day's pay; but for drunkenness, the same extends not to Commanders, or other Commission and Warrant-Officers; for they upon conviction before the *Admiral* shall be rendred incapable of their Command.

13 Car. 2.  
cap. 9. Artic. 2.

\* By Orders  
of His Royall  
Highness.

And a Lyar convicted a Ship-board, shall be hoisted upon the main-stay with 4 Braces, having a Broom and Shovel tyed to his back, where he shall continue an hour, every Man crying, *A lyar, a lyar*, and a week following he shall clean the Ship's head and sides without board, according

Artic. 12.



Artic. 3.

according to the antient practise of the Navy, if he receives greater Wages then for an able Sea-Men, then half a day's pay.

*Livy lib. 2.  
cap. 5. ult. ad  
Leg. Corn. de  
Sicariis pun.*

*Stat. 13. Car.  
2. cap. 9. Art. 3.*

Artic. 4.

VI. By the *Laws of Nations*, *Spies* may be sent to survey the Enemy's Force, Fleet, Station or Squadron, and make discovery of whatsoever may give advantage to the Persons sending: So *Moses* and *Joshua* did into the *Holy Land*; on the other hand being deprehended, they are to be put to death, as *Apian* saith; and by the *Laws of England*, if any Officer, Souldier or Mariner, in actual Service, and in pay in his Majesties Fleet; or any other Person in the same, shall give, hold, or entertain any intelligence to or with any *King*, *Prince* or *State*, being enemy to, or any Person in Rebellion against his Majesties his Heirs and Successors, without leave or authority from the King, Admiral, Vice-Admiral, or Officers in chief of any Squadron, they are to suffer death: Now, the bare receipt of a Letter or Message from an Enemy, will not make a Man subject to the penalty of this Article; and therefore the subsequent Article explains the precedent, in which it is provided, that if any inferiour Officer, Mariner, or Souldier shall receive any Letter or Message from any King, Forreign Prince, State, or Potentate, being an Enemy, or on their behalf, and if such Person does not reveal the same within 12 hours, having opportunity so to do, and acquaint the Superior Commander with it, such Person is to suffer death; so likewise, if such Superior Officer, or Mariner being acquainted therewith by an inferior Officer, Mariner or other, such Superiour Officer, Commander or Mariner, in his own Person, receiving a Letter or Message from any such Enemy or Rebell, and shall not in convenient time reveal the same to the *Admiral*, *Vice-Admiral* or *Commander* of the Squadron, shall suffer the like pain of death, or such punishment as a *Court Marshal* shall inflict: Now, *Spies* are put to death sometimes justly by those that manifestly have a just cause of Warring by others; by that licence which the Law of War granteth; nor ought any Person to be moved with this, that such being taken, are punished with death; for that proceeds not from their having offended against the Law of Nations;

tions, but from this, that by the same Law every thing is lawfull against an Enemy: And every one as it is for his own profit, determineth either more rigourously or gently, but that *Spies* are both lawfull and practicable, there is no question; for at this day by the generall instructions of Fleets, there is alwaies out of each Squadron some Frigots or Ships appointed, to make discovery of the Enemy, and upon fight to make saile, and to stand with them; in order to the taking cognizance of their Force, as well Ships of War as Fire-Ships, and in what posture they lay; which being done, those detecting Frigots are to speak together, and to conclude on the report they are to give, which done, they return to their respective Squadrons; such Ships in such service are not obliged to fight, especially if the Enemies Force exceed them in number, or that they shall have an apparent advantage.

VIII. Again, it is not lawfull for any, be he friend or neuter, to relieve an Enemy, much less for a Soldier or Mariner in pay, to supply him that conspires the destruction of my Countrey, is a liberality not to be allowed of, he is to be accounted an Enemy that supplies the Enemy with necessaries for the War; and therefore by the Laws of War is so to be esteemed; and by the Laws of England, if any Person in the Fleet relieve an Enemy or Rebell in time of War, with Money, Victuals, Powder, shot, Armes, Amunition or any other supplies whatsoever, directly or indirectly, shall suffer death.

IX. Ships being assaulted and taken as prize, all the Papers, Charter-parties, Bills of lading, Pass-ports and other Writings whatsoever that shall be taken, seized or found aboard, are to be duely preserved, and not torn or made away; but the very Originalls are to be sent up entirely and without fraude to the Court of Admiralty, or to the Commander appointed for that purpose, in order to the condemnation of the Prize, upon pain of the Captors losing their share in the Prize, and also subject to such other punishment as a Court Marshall shall think fit.

X. The Right of taking of spoil was approved of GOD, within these naturall bounds which have been already

*Ad Leg. Corn.  
de fariis pun.*

*Tacit Hist. 5.*

*Bartol. Leg.  
nullus. Leg. 2.  
de Judais Ca-  
licolis.*

*Procopius  
Goth. 1.*

*Stat. 13. Car.  
2. cap. 9. art. 5.*

*Artic. 6.*

*Leg. Naturalem §. ult. D. de Atq. rerum Dom. tit. de rerum div.*

*Artic. 7.*

\*By the donation of His Majesty.

*Artic. 8.*

already mentioned, is further evinc't by the appointment that GOD in his Law concerning the Acquisition of Empire over the conquered, after refusal of peace, *All the spoil thereof shalt thou take unto thy self, and thou shalt eat the spoil of thine enemies, which the LORD thy GOD hath given thee:* Hence it is, that things taken from the Enemy, presently become theirs that take them by the Law of Nations; and such acquisition is called *Natural*, for not any cause, but the naked fact is considered: And thence a Right springeth; for as the Dominion of things began from Natural possession and some print of the same remains in the things taken in the Land, the Sea, and the Air; so likewise of things taken in War; but though this gives a Right to the Captors; yet that must be understood to the Sovereign or to the State that imploy'd them, and not to themselves; but if they have any share of the Prize, the same proceeds by the condiscention or grant of the Sovereign, which may be enlarged or abridged as occasion serves; and therefore by the Laws of *England*, Ships of War having a Prize, the goods and all manner of lading is to be preserved, till adjudication shall pass; but that is to be understood, where the Ship voluntarily yields: but Ships whom they shall assault, and take in fight or prize, the pillage of all manner of Goods and Merchandizes (other then Arins, Ammunition, Tackle, Furnitures or stores of such Ships) as shall be found by the Captors; upon or above the Gun-deck of the Ship, become theirs\*; but this is to be understood where such Prize may lawfully be possess'd; for there are times when such are not to be meddled with, and therefore it is against the rules of War in fight, if some of the Enemies Ships are there disabled; yet those Ships that did so disable them, if they are in a condition to pursue the Enemy, cannot during the fight take, possess, or burn such disabled Ships, and the reason is, least by so doing some more important service be lost, but they are to wait for such booty, till the *Flagge-Officers* shall give command for the same.

*Vluzzali*, King of *Algier*; in the famous Bataill of *Lepanto*, having behaved himself very valiantly there against the *Christians*, that he destroy'd severall of their Gallies;

Galleys, and others, he took amongst the rest the Galleys of *Pietro Bua* of *Corsa*, of the *Prior* of *Messina*, and *Ludovico Tipico* of *Trabu*, and *Benedeto Soranza*, the which he towed after him before the Battle was compleated; but that getting proved the loss both of the one and the other, for the *Turks* out of covetousness of the plunder, or otherwise thronging into them, occasioned their taking fire, in which the *Victors* in those flames became *Victimes*, and after follow'd the totall rout of the *Ottoman* power.

*Hist. Republ. Venet. fo. 127, 128.*

XI. It is almost impossible, that in Ships of War, which in these daies carry so considerable force in Men, but there will be some amongst them that have heads of knavery, and fingers of Lime-twigs, nor fearing to steal that from their Prince, which is applicable only for the good of their Countrey; such sort of *Night-wolves* when caught, are to be severely punished; and therefore to steal or take away any Cables, Anchors, Sails, or any of the Ships Furniture, or any of the Powder or Arms, or Amunition of the Ship, subjects the offender to the pains of death, or to such other punishment as the quality of the offence shall be found by a *Court Martial* to deserve.

*Artic. 8.*

XII. By the ninth Article, Foreign Ships or Vessels taken as Prize, without fighting, none of the Captains, Masters or Mariners being Forreigners, shall be stripped of their cloaths, or in any sort beaten, pillaged; or evil entreated; and the Persons so offending being obliged to render double damage: this Law most expressly doth not extend to those that obstinately shall maintain a Fight; for most certain, by the Law of Arms, if the Ship be boarded and taken, there remains no restriction, but that of charity; and if a Ship shall persist in the engagement, even till the last, and then yield to mercy, there has been some doubt, \* whether quarter ought to be given to such; (for they may ignorantly † maintain with courage a bad cause:) but Captives and those that yield or desire to yield, there is no danger; Now, that such may be justly killed, there must be some antecedent crime, and that such a one as an equall Judge, would think worthy of death; and so we see great severity shew'd to the Captives and those that have yielded;

*Crasus persuading Cyrus not to give up Lydia to be pillaged by his Men, tells him, Non meum, inquit, non res meas diripes, nihil enim ad me jam ista ad-pertinent: tua sunt, tua illi perdent, Herod. lib. 1.*

*\* Victor. de Jur. Belli n. 49, & 60.*

*† D. & C. de Juris & facti.*



Printes indeed are Gods, ed; or, their yielding on condition of life not accepted if after they were convinced of the injustice of the War, but neither do they had nevertheless persisted with hatred or cruelty, if the Gods hear they had blotted their Enemies Name with unsufferable supplicants, except they be disgraces, if they had violated their Faith or any Right of Nations; as of Ambassadors, if they were fugitives: just. But the Law of Nature admits not talliation, \* except

\* The Syracusians were accused for that they slew the Wives and Children of Hycetas, because Hycetas had slain the Sister and Son of Dion. Plutarch, Timon, & Dione. against the very individuall Person that hath offended; nor doth it suffice that the Enemies are by a fiction conceived to be as it were one Body; though otherwise by the Laws of Nations, and by the Laws of Arms, and at this day practised, in all Fights, the small Frigots, Ketches and Smacks, are to observe and take notice of the Enemies Fire-Ships, and to Watch their motion, and to do their best, to cut off their Boats, and generally the Persons found in them are to be put to death, if taken, and the Vessel if not taken, destroy'd; and the reason why the extremity of War is used to such, is that by how much the mischief is the greater by the act of

† In England such Men if executed, by so much the punishment is aggravated if taken, and quarter deny'd them by Law of War. when the Admirall would have the Van of the Fleet to tack first, the Admirall did generally put aboard the Union-Flagg, at the staff on the fore-top Mast-head (that was when the Red Flagg was not abroad.) But if the Red Flagg had been abroad, then the fore-top-sail was to be loared a little, and the Union Flagg was to be spread from the Cap of the fore-top-Mast downwards. When the Reer of the Fleet was to tack first, the Union Flagg was put abroad on the Flagg staff of the Mizon-top-Mast-head, upon which two signals the Flagg Ships were to continue the same signals on their Ships, till the same was answered; when the Admirall would have all the Ships to fall into the Order of Battle prescribed at the Councell of War, the Union Flagg was put on the Mizon Peake of the Admirall's Ship, upon sight of which the Admiralls of the other Squadrons were to answer it by doing the like signall, when the Admirall would have the other Squadrons to make more saile, though himself shorten saile, a white Ensign was put on the Ensign staff of the Admirall's Ship: Instruction first of May 1666. but yet signals may be altered or changed as often as it shall please the Admirall to think the same necessary and convenient.

are in their own Person, and according to their Place, to hearten and encourage the inferiour Officers and common Men to fight valiantly and courageously, and not to behave themselves faintly, under the disgrace of being caltheered, and if he or they yield to the Enemy, Pyrat or Rebell, or cry for quarter, he or they so doing, shall suffer the pains of death, or such other punishment as the offence shall deserve. Now, though Souldiers or Mariners having oblidged themselves faithfully to serve in the Expedition or Navy; yet that is to be understood no further then his or their power to do his utmost in his or their Quality, for though the obligation for the Service be taken in the strickest tearms of undergoing death and danger; yet it is to be understood alwaies conditionally as most promises are, viz. if the action or passion may be for that Fleet or Princes advantage; and therefore if the Fleet or Squadron is beaten, and the Ships are disabled, and left scarce without any to defend them, now the Souldiers or Mariners remaining can do no more for their Prince then die, which indeed is to do nothing at all, but to cease for ever from doing any thing either for him or themselves, in those Streights; therefore it is not repugnant to their Oath called *Sacramentum Militare*, to ask quarter or strike; and having begg'd a new Life and taken it, they are bound in a new and just obligation of Fidelity to those to whom they were bound to kill few hours before; neither can the Prince or Generall expect by virtue of their former obligation to him, they should kill any in the place where the quarter was given: however, this Fidelity hath not its inception; from the time of taking quarter; but when the Battle is over, and that time which is termed cold blood; for without all controversy, if a Ship be boarded, and the Quarter is given, yet if while the Fight lasts, the Persons captives can by any possibility recover their liberty and Ships, they may by the *Law of Arms* justly acquire the same.

And since impunity is granted to such unfortunate desertors, yet it must be apparently evident and fully proved, that they were reduced into a condition beyond all hope in the Battle: and therefore the sect that for-

*Lipsius de Mil. Rom. l. 1. dial. 6, & 4. And Polybius expresseth the Oath thus, Obtemperaturus sum, & salutaris quicquid mandabitur ad Imperatoribus; juxta vires: and such saies he, were termed Militares per Sacramentum.*

took the *Unfortunate Pompey* before the field was lost, were justly condemned for the breach of the *Roman* discipline and Law of Armes: and therefore the Article hath not positively declared death only, but added, or such other punishment as the offence shall deserve, which provision leaves the Action to be judged and punished by a *Council of War*, who know best what's to be done in cases of that nature; however, a base or cowardly yielding; or crying quarter, is to be punished with death, and that without mercy.

XIV. The obeying of Orders hath in all Ages been in mighty esteem: *Chrysantus*, one of *Cyrus's* Souldiers, being upon his Enemy, withdrew his sword, hearing a retreat sounded; but this comes not from the external *Laws of Nations*; for as it is lawfull to seize on the Enemy's Goods, so likewise to kill the Enemy, for by that Law the Enemies are of no account; but such obedience proceeds from the *Military discipline* of several Nations: by the *Romans*, it was a Law † noted by *Moderatus*, that whosoever obey'd not his Orders, should be punisht with death, though the matter succeded well; now he also was supposed not to have obey'd, \* who out of Order without the Command of the *General* entered into any Fight.

† Leg. desertorem. De de re Milit.

\* Livy lib. 7. Manliani Imperia.

For if such liberty were lawfull either Stations would be deserted, or (licence proceeding) the Army, Fleet, or Squadron would be engag'd in unadvised Battles, which by all means is to be avoyded. *M. Capello*, a *Venetian* Gentleman of an antient Extraction, having the Charge of the *Guarding the Venetian Gulph*, \* met with the *Barbary Fleet*, whom he so assaulted, that he burnt and took divers of them; among the rest the *Admirall Galley of Algier*, (a Vessel of vast bigness) which he brought with him away, and she remains at this day a *Trophy* in the *Arsenall of Venice*; the service although Noble and Honourable, and such as brought renown to the *Reipublique*, yet in regard it was an Action exceeding his Commission, must they not pursue a small number, before the main of the Enemy be beaten or run. Nor ought they in chasing, chase beyond sight of the *Flagg*, and at night all chasing Ships are to return to the *Flagg*. *Sept. 22, 23 in 1. May 1666.* \* *Hist. of the Reipub. of Ven* fo. 170, 171.



he was adjudged to punishment: (but his great Merit and Alliance, preserved his Life) such an exact obedience that *Seignory* expects to be pay'd to her Orders, be the success never so Glorious: And by the eleventh *Article*, every *Captain*, *Commander*, and other *Officer*, *Seaman* or *Souldier* of any Ship, Frigot or Vessel of War, they are duely to observe the Commands of the *Admirall* or other his Superior, or *Commander* of any Squadron, as well for the assaulting, and setting upon any Fleet, Squadron, or Ships of the Enemy, Pyrat or Rebels, or joyning Battle with them, or making defence against them, as all other the Commands of the *Admirall*, or other his Superior Commander, the disobeying of which subjects them to the pains of death, or such other punishment, as the quality or neglect of his offence shall deserve. *Artic. 11.*

XV. Again, every *Captain* and all other *Officers*, *Mariners* and *Souldiers* of every Ship, Frigot, or Vessel of War, shall not in time of any Fight or Engagement, withdraw or keep back; but on the other hand, they are to come into the Battle, and engage, and do their utmost endeavour to take, fire, kill, and endamage the Enemy, Pyrat or Rebell, and assist and relieve all other his Confederate Ships; and if they shall prove cowards, they are to be dealt with as cowards ought by the Law of Arms, which is to suffer death: But circumstance of things may make alteration of matters, therefore there is added or other punishment, as the circumstance of the offence shall deserve, or a *Court Martiall* think fit. *Artic. 12.*

There are some offices to be done, even to them from whom you have received an injury; for revenge and punishment must have a measure; and therefore the issues of the *Roman Wars* were either milde or necessary; now when killing is just in a just War, according to internal justice may be known by the examining the causes or end of the War, which may be for the conservation of Life and Members, \* and the keeping and acquiring of things usefull unto Life; now in the assaulting of Ships, it happens that one is slain on purpose or without purpose; on purpose no Man can be slain justly, unless either for just punishment, as without it we cannot protect and defend our Life, our Goods, our Countrey, &c. That *Cicero Office 1, & 2.* \* *Grotius de Jure Belli ac Pacis lib. 1. cap. 2. §. 1.*



That such punishment may be just, it is necessary, that he who is slain, have offended, and that so much as may be avenged with the punishment of death in the Sentence of an equall Judge, be expected: now we must note between full injury and meer misfortune often intercedes some mean, which is as 'twere composed of both; so that it can neither be called the act of one knowing and willing, nor meerly the act of one ignorant or unwilling. This distinction by *Themistius*, is fully illustrated; You have made a difference 'twixt an injury, a fault, and a misfortune; although you neither study *Plato*, nor read *Aristotle*, yet you put their Doctrine into practise; for you have not thought them worthy of equall punishment, who from the beginning perswaded the War, and who afterward were carryed with the stream, and who at last submitted to him, that now seem'd to have the highest power; the first you condemn'd, the next you chastised, the last you pittied: Most certain to spare Captives or Prisoners of War, is a command of goodness and equity; and in Histories they are often commended; who when too great a number prove burdensom or dangerous, chose rather to let them all go then to slay them, or detain them, though for Ransoms; as the last *Flemish Wars* with *England*, so for the same causes, they that strike or yield up themselves are not to be slain, (though there is no provision made by Covenant.) In Towns besieg'd it was observed by the *Romans*, before the *Ram* had smitten the Wall, *Cæsar* \*denounceth to the *Advatici*, he would save their City, if before the *Ram* had touched the Wall, they yielded; which is still in use in weak Places, before the great Guns are fired; in strong Places before an Assault is made upon the Walls; † and at Sea, by firing 1 or 2 Guns, or hanging out the bloody Flag, according as the instructions are, however, till there be an absolute yielding or quarter cry'd by the *Law of Armes*, as well as by the above mentioned Article, every Commander and Souldier is to do his utmost, to take, fire, kill and endamage the Enemy, or whatsoeuer may tend thereunto.

XVI. By the *Law of Arms*, he deserves punishment who doth not keep off force that is offered to his fellow Souldier;

*Misericordia infortunio debetur: atqui deliberati scientia male agitur, non infelix, sed injustus.*  
And *Cicero* hath a saying out of *Demostrines*; We must shew compassion to those whom fortune, not their own deeds have made miserable.

*Scipio Africanus* at the overthrow of *Carthage*, proclaimed that they should fly that would. *Polybius*, vide *Tacitus Annal.* 12.

Vide *Serran.* in reb. *Franc.* 1. & *Hen.* 2. *Thucyd.* lib. 3. *Cæsar* l. 2. de *Bello Gallico*

† *Dinand* in *Germany*, being taken by assault, the town was raised and burnt and the prisoners all put to death.

Vide *Phil. Comines* lib. 2. cap. 1.

Souldier; and though it hath been conceived, that if there be manifest danger, that he is not bound to come into his relief: for such Commanders may prefer the lives in his own Ship, before those in another; yet that suffices not for every Souldier by the Law of Arms, is not only bound to defend, but likewise to assist and relieve his Companion: now Companions are in two respects, either those that are in actual service with such Souldiers, or those that are not, but only committed to their protection or Convoy, which are to be defended and guarded at the same peril and charge that a fellow Souldier is; and therefore all Ships that are committed to Convoy and Guard, they are diligently and carefully to be attended upon without delay, according to their Instructions, in that behalf: And whosoever shall be faulty therein, and shall not faithfully perform the same, and defend the Ships and Goods in their Convoy without either diverting to other parts or occasions, or refusing or neglecting to fight in their defence, if they be set upon or assailed, or running away cowardly, and submitting those in their Convoy to hazard and peril, or shall demand or exact any Money or other reward from any Merchant or Master, for conveying of any such Ships or other Vessells belonging to *His Majesty's* Subjects, shall be condemned to make reparation of the damage to the Merchants, owners, or others, as the *Court of Admiralty* shall adjudge, and also be punished criminally according to the quality of their offences, be it by pains of death or other punishment, according as shall be adjudged fit by that *Court Martiall*: Now, those Ships that are not under Convoy but engaged in fight, are faithfully to be relieved; and therefore if a Squadron shall happen to be over-charged and distressed, the next Squadron or Ships are to make towards their relief and assistance upon a signal given them; which is generally given in the *Admiralls* Squadron by a Pendant on the fore-top-Mast, head of any Flagg-Ship in the *Vice-Admiralls* Squadron, or he that commands in chief in the second place, a Pendant on the main top-Mast head, and the *Reer-Admiralls* Squadron the like: but these signalls sometimes change, according to the wisdom and

I will defend  
my Compani-  
on at the cost  
of my own  
Blood, and  
partake in his  
danger. *Senec.  
de Ben. 2. 15.*

resolution of the *Admirall*. Again, Ships that are disabled by loss of Masts, shot under Water, or the like; so as they be in danger of sinking or taking, the distressed Ships generally make a sign by waft of their Jack and Ensigns, and those next to them are bound to their relief; but yet this does not alwaies hold place, for if the distressed Ship is not in probability of sinking, or otherwise encompassed with the Enemy, the reliever is not to stay under pretence of securing them, but ought to follow his leader and the Battle, leaving such lame Ships to the Stern most of the Fleet; it being an undoubted Maxime, *That nothing but beating the Body of the Enemy can effectually secure such disabled Ships.*

Artic. 14.

But that is  
to be under-  
stood as in the  
XII. §. of this  
Chapter.

XVII. It is not enough that Men behave themselves valiantly in the beating of an Enemy, for that is not all, but the reducing of him into a condition to render right either for damage done, or to render that which is right; which cannot well be done without bringing him to exigences and streights; and therefore if the Enemy, Pyrat, or Rebell be beaten, none, neither through cowardize, negligence, or disaffection, ought to forbear the pursuit, and those of them flying, nor ought such either through cowardize, negligence or disaffection, forbear the assisting of a known friend in view, to their utmost power, the breach of which, subjects the offenders to the pains of death, or at least such punishment as a Court Marshall shall think fit.

Empires are got by Arms, and propagated by victory; and by the *Laws of War*, they that have overcome, should govern those they have subdued: Hence it is that Generalls having compleated a Conquest in a just War, and in chase or otherwise have taken the Ships or Goods of the Enemy, have absolute power over the Lives, Estates, Ships and things that they by force of Arms hath acquired, by the *Laws of Nations*.

But yet in such Conquests where the reeking sword knows no Law, that is they are done *impune*, without punishment, because co-active Judges do grant them their authority; † but yet such power may be exorbitant, from that rule of right called *Virtue*; and therefore by the *Law of War* Captives may be slain, yet what Law forbids not,

† Tacitus 3.  
Annal. Pom-  
peius gravior  
remediis quam  
delicta erant.



not, modesty prohibits to be done. Hence it is that *Generals* do often restrain that power of killing; for though such Prisoners of War do fight for the maintenance of an unjust cause, and although the War is begun by a solemn manner; yet *acts* that have their rise from thence, are unjust by internal injustice; so that they who knowingly do persist in fighting, † yet ought they not alwaies to be slain, according to that of *Seneca*; *Cruel are they*, saies he \*, *that have cause of punishment, but have no measure*: For he that in punishing goes further then is meet, is the second author of injury; and the principal reason why mercy is often shew'd, is, for that Souldiers of fortune offend not out of any hatred or cruelty, but out of duty.

XVIII. Again, *Generals* in the measure of killing, look no further commonly then the destruction of those who by force of Arms oppose them, and though Ships or Cities are taken by assault, the which by the Laws of War subjects every individual to the mercy of the Conqueror; yet Children, Women, Old Men, Priests, Scholars and Husband-Men are to be spared; the first by the Law of Nature, according that of *Camillus*, *We have* *Armes*, saies he, *not against that age which even in taking Cities is spared, but against armed Men*, and this is the Law of Arms amongst good Men; by which we are to note that by the words *good Men*, as is observed, † to mean the Law of Nature for strictly by the Law of Arms, the slayers of them are without punishment.

Now, that which hath place in Children alwaies that have not attained the use of Reason, for the most part prevails with Women; that is unless they have committed something peculiarly to be avenged, or do usurp Manly Offices, as flinging of stones from the Walls \* pouring down burning pitch, and brim-stone, and the like be-tuminous stuff, firing of Guns and the like, for it is a Sex that hath nothing to do with the Sword, that are capable of that clemency.

The like for old Men, whom *Papinius* observes, are not to be slain; so for Ministers of Sacred things, even Barbarous Nations, have had them in reverence and preservation; as the *Philistins* enemies of the *Jews*, did to the

† *Grotius de Jure Belli ac Pacis lib. 3: cap. 10. §.*

\* 2. de *Clem.* cap. 4.

*In Vita Cæcili Livy libi 1, & 5.*

† *Grotius de Jure Belli ac Pacis l. 3. c. 11.* who observes that many pretences may be found out against Men of mature age, but against Infants, calumny it self can find nothing to say, as being clerely innocents. \* *Herod. in Vita Maximin. fo. 417.*

*Papin. nullæ violabilis armis turba sed nes. Viff. D. loca.*

*Calledge*



## Of the Naval Military part.

resolution of the *Admirall*. Again, Ships that are disabled by loss of Masts, shot under Water, or the like; so as they be in danger of sinking or taking, the distressed Ships generally make a sign by waft of their Jack and Ensigns, and those next to them are bound to their relief; but yet this does not alwaies hold place, for if the distressed Ship is not in probability of sinking, or otherwise encompassed with the Enemy, the releiver is not to stay under pretence of securing them, but ought to follow his leader and the Battle, leaving such lame Ships to the Stern most of the Fleet; it being an undoubted Maxime, *That nothing but beating the Body of the Enemy can effectually secure such disabled Ships.*

Artic. 14.

But that is  
to be under-  
stood as in the  
XII. s. of this  
Chapter.

XVII. It is not enough that Men behave themselves valiantly in the beating of an Enemy, for that is not all, but the reducing of him into a condition to render right either for damage done, or to render that which is right; which cannot well be done without bringing him to exigences and streights; and therefore if the Enemy, Pyrat, or Rebell be beaten, none, neither through cowardize, negligence, or disaffection, ought to forbear the pursuit, and those of them flying, nor ought such either through cowardize, negligence or disaffection, forbear the assisting of a known friend in view, to their utmost power, the breach of which, subjects the offenders to the pains of death, or at least such punishment as a Court Marshall shall think fit.

*Empires* are got by Arms, and propagated by victory; and by the *Laws of War*, they that have overcome, should govern those they have subdued: Hence it is that Generalls having compleated a Conquest in a just War, and in chase or otherwise have taken the Ships or Goods of the Enemy, have absolute power over the Lives, Estates, Ships and things that they by force of Arms hath acquired, by the *Laws of Nations*.

But yet in such Conquests where the reeking sword knows no Law, that is they are done *impune*, without punishment, because co-active Judges do grant them their authority; † but yet such power may be exorbitant, from that rule of right called *Virtue*; and therefore by the *Law of War* Captives may be slain, yet what Law forbids not,

+ Tacitus 3.  
Annal. Pom-  
peius gravius  
remediis quam  
delicta erant.

not, modesty prohibits to be done. Hence it is that *Generals* do often restrain that power of killing; for though such Prisoners of War do fight for the maintenance of an unjust cause, and although the War is begun by a solemn manner, yet *acts* that have their rise from thence, are unjust by internal injustice; so that they who knowingly do persist in fighting, † yet ought they not alwaies to be slain, according to that of *Seneca*; *Cruel are they*, saies he \*, *that have cause of punishment, but have no mea-* † *Grotius de Jure Belli ac Pacis lib. 3: cap. 10. §.* *Jure*: For he that in punishing goes further then is meet, is the second author of injury; and the principal reason why mercy is often shew'd, is, for that Souldiers of fortune offend not out of any hatred or cruelty, but out of duty.

XVIII. Again, *Generals* in the measure of killing, look no further commonly then the destruction of those who by force of Arms oppose them, and though Ships or Cities are taken by assault, the which by the Laws of War subjects every individual to the mercy of the Conqueror; yet Children, Women, Old Men, Priests, Scholars and Husband-Men are to be spared; the first by the Law of Nature, according that of *Camillus*, *We have* *Armes*, saies he, *not against that age which even in taking Cities is spared, but against armed Men*, and this is the Law of Arms amongst good Men; by which we are to note that by the words *good Men*, as is observed, † who observes to mean the Law of Nature for strictly by the Law of Arms, the slayers of them are without punishment.

Now, that which hath place in Children alwaies that have not attained the use of Reason, for the most part prevails with Women; that is unless they have committed something peculiarly to be avenged, or do usurp Manly Offices, as flinging of stones from the Walls \* pouring down burning pitch, and brim-stone, and the like be-tuminous stuff, firing of Guns and the like, for it is a Sex that hath nothing to do with the Sword, that are capable of that clemency.

The like for old Men, whom *Papinius* observes, are not to be slain; so for Ministers of Sacred things, even Barbarous Nations, have had them in reverence and preservation; as the *Philistins* enemies of the *Jews*, did to the

Calledge

† *Grotius de Jure Belli ac Pacis lib. 3: cap. 10. §.*

\* 2. de Clem. cap. 4.

*In Vita c. 2. milli Livy libi 1, & 5.*

† *Grotius de Jure Belli ac Pacis l. 3. c. 11.*

who observes that many pretences may be found out against Men of mature age, but against Infants, calumny it self can find nothing to say, as being clearly innocents.

\* *Herod. in Vita Maximin. fo. 417.*

*Papin. nullus violabilis armis turba sed nes. Viti. D. loca.*

*Sam. 10. 5.* Colledge of Prophets, whom they did no harm, and with those Priests are justly equalled in this respect, they that have chosen a like kind of life as *Monks* and *Penitents*, whom therefore as well as Priests, the *Canons* following in naturall equity, will have spared, \* to these are deservedly added those that give themselves to the Study of good Learning and Sciences useful to Mankind, be it in *Universities*, or other publique *Schools* or *Colledges*.

*Leg. execut. C. que res pign.*

*Vide 2. Inst. fo. 58. & Trin. 31 E. 1. coram Rege Rot. 127.*

To these are added *Tradesmen*, † so likewise *Merchants*, which is not only to be understood of them that stay for a time in the *Enemies Quarters* but of perpetual *Subjects*, for their life hath nothing to do with Arms, and under that name are also contained other *Work-Men* and *Artificers*, whose gain loves not War, but Peace.

Again, *Captives* and they that yield, are not to be slain, for to spare such is a *Command of goodness and equity*, sayeth *Seneca*; \* nor are *Hostages* to be destroy'd, according to that of *Scipio*; who said, He would not shew his displeasure on harmles *Hostages*, † but upon those that had revolted, and that he would not take revenge of the unarmed, but the armed *Enemy*: 'tis very true, by the *Law of Arms*, if the *Contract* be broke for which they became *Hostage*, they may be slain, that is, the slayer is without punishment: but yet some \* conceive the slayer is not without sin, for that no such *Contract* can take away any *Man's* life, that is, I suppose an *Innocents* life; but without controverſie, if those that become *Hostage* be or were before in the number of greivous delinquents, or if afterwards he hath broken his *Faith* given by him in a great matter, the punishment of such may be free from injury.

† 2. de Ira cap. 10. Quicquid multis peccatur inultum est. Magis monendo quam minando: sic enim agendum est cum multitudine peccantium severitas autem exercenda est in peccata paucorum. Gailinm de pace pub. lib. 11. cap. 9. 36.

XIX. Where offences are of that nature as they may seem worthy of death, as mutiny, and the like, &c. it will be a point of mercy, because of the multitude of them to remit extream right, according to that of *Seneca* †, The severity of a General shews it self against particulars, but pardon is necessary where the whole Army is revolting, what takes away anger from a wise Man, the

multi-

multitude of Transgressors? Hence it was that casting of Lots † was introduced that too many might not be subjected to punishment.

† vide Grœt.  
lib. 3. cap. 124  
S. 17.

However, all Nations have generally made it a standing Rule in the punishment of Mutineers as neer as possible, to hunt out the authors, and them make examples of\*.

\* Victor de Jure  
re Belli n. 59.  
lib. 2.

And therefore by the 15 Article, if any Man at any time when Service or Action is commanded shall presume to stop or put backwards or discourage the said Service and Action, by pretence of arrears of wages or upon any pretence of wages whatsoever, they are to suffer death; and indeed the same ought to be without mercy, by how much the more they may raise a mutiny at a time when there is nothing expected but Action, and the shewing the most obsequious duty that possibly may be; the breach of which may occasion the damage of the whole Fleet, and being of such dangerous consequence, ought severely to be punished: So likewise the uttering of any words of Sedition or Mutiny, or the endeavouring to make any mutinous Assemblies upon any pretence whatsoever, is made death: And the very concealors of any trayterous and mutinous practises, designs or words, or any words spoken by any to the prejudice of His Majesty or Government, or any words, practises, or designs tending to the hinderance of the Service, and shall not reveal them, subject them to such pains and punishments as a Court Marshal shall think fit. And whereas in no case of the offences committed against any of the Articles for the Government of any of His Majesties Ships of War, within the Narrow Seas, wherein the pains of death are to be inflicted, execution of such Sentence ought not to be made without leave of the Lord Admiral; this of mutiny is totally excepted, for such may be executed immediately.

Artic. 15.

Artic. 19.

Artic. 20.

Art. 34.

XX. It is not lawful for Princes or States to make of their Enemies Traytors, or to desert the Service of their Prince, or to bring over their Ships, Ordinance, Provisions or Arms; for as it is not lawful for any Subject to do the same, so likewise to tempt him; for he that gives a cause of sinning to another, sins also him-

Grœt. de Jure  
Belli ac Pacis  
lib. 3. cap. 1.

self.



self; but if a Man will voluntarily without any other impulse, then his own, bring over the Ships or Armies, or deserts the Service of his Prince, to serve another; this, though a fault in the defertor, is not in the reciever. *We recieve a fugitive by the Law of War, (saith Celsus\*) that is, it is not against the Law of War to admit him who having deserted his Princes part, elected his Enemies; nor are such to be rendred, except it shall be agreed, as in the Peace of Lewis the 11th. \* However such sort of gamsters, if caught, are to be severely punished; and therefore it is provided, that if any Sea Captain, Officer, or Sea-Man that shall betray his trust, or turn to the Enemy, Pyrat or Rebel, or run away with their Ship or Ordinance, Ammunition or Provision, to the weakning of the Service, or yield the same up to the Enemy, Pyrat or Rebel, shall be punished with death, so likewise if any shall desert the Service or the Employment, which they are in a Ship-board, or shall run away or entice any other so to do, they are subject to the like pain of death. And by the Law of Nations, such desertors that run away from their Colours or Fleet before Peace proclaimed and concluded, all Persons of that Prince from whom they fled, have a right indulged to them to execute publique revenge.*

\* *Leg. Trans-*  
*fugam D. re ac-*  
*quiescentem dom.*  
*Polyb. in ex-*  
*cerpt. Legat. 9.*  
*28. 34 Me-*  
*xander Prote-*  
*stor idem nos*  
*docet.*

\* *Phil. Co-*  
*mines lib. 4.*  
*chap. 12.*

*Artic. 16.*

*Artic. 17.*

*Tertul. Apolog.*  
*9. c. quando*  
*liceat. lib. 2.*  
*in res majesta-*  
*tis & publicos*  
*hostes omnis*  
*homo miles. Vi-*  
*de Grot. lib. 1.*  
*cap. 15. §.*

*Vide Hetley*  
*Rep. 235. 1 H.*  
*7. cap. 1. 3 H.*  
*8. cap. 5.*

† *Livy lib. 2.*  
*lib. 3. §. ult.*  
*ad Leg. Corn.*  
*de Sicariis puz.*  
*artic. 18.*

XXI. By the Law of Nations, † *Spies* may be sent to view and survey the Enemies Force, Fleet, station, and make discovery of whatsoever may give advantage to the Persons sending, as is mentioned above; but being apprehended, they are to be put to death: and therefore if any Person shall come from or be found in the nature of *Spies*, to bring any seducing Letters or Messages from any Enemy or Rebel, or shall attempt or endeavour to corrupt any Captain, Officer, Mariner, or other of the Navy or Fleet, to betray his or their trust, or yield up any Ship or Ammunition, or turn to the Enemy or Rebel, shall be punished with death.

XXII. Souldiers and Mariners ow all respect and duty to their Superior Officers; and therefore when they are in anger, they ought to avoyd them; but above all not to quarrel with, or give them any provoking language: and therefore by the Law of Arms, a Souldier who

who hath resisted his Captain, willing to chastise him, if he hath laid hold on his rod, is cashier'd, if he purposely break it, or laid violent hands upon his Captain, he dyes: \* And by the Laws of England if any Person shall presume to quarrel with his Superior Officer, he shall suffer severe punishment; and if he strikes him, shall suffer death, or otherwise as a Court Marshal shall adjudge the matter to deserve †.

\* *Leg. militis:  
D. de re milit:  
Rufus Legi  
militarihus  
cap. 19.  
† Artic. 21.*

XXIII. And though Mariners and Souldiers may have just cause of complaint, as that their victuals or provisions are not good, yet must they not mutiny or rebel, whereby to distract or confound the whole Crew; but must make a civil and humble address to their Commander, that the same may be amended; and if the case be such, that the Commander cannot redress the same, by going to Port to supply the exigencies, without detriment of the Fleet (as if ready to engage, or the like) they must like Men and Souldiers bear with the extremity, considering that it is better that some Men should perish, nay, the whole Crew in one Ship, then the whole Fleet; nay, perhaps the whole Kingdom be destroyed: And therefore if any in the Fleet find cause of complaint of the unwholsomness of his victuals, or upon other just ground, he shall quietly make the same known to his Superior, or Captain, or Commander in chief, as the occasion may deserve, that such present remedy may be had, as the matter may require; and the said Superior or Commander is to cause the same to be presently remedied accordingly; but no Person upon any such or other pretence shall privately attempt to stir up any disturbance, upon pain of such severe punishment, as a Court Martial shall think fit to inflict.

*Bacon maxime  
fo. 17. Privi-  
legium non va-  
let contra rem  
publicam.*

XXIV. And as the Law doth provide that there be no waste or spoil of the Kings provision, or imbezlement of the same; so likewise that care be taken, the Ships of War neither through negligence or wilfulness be stranded, split or hazarded, upon severe penalties. In fights and when great Fleets are out, there are generally instructions appointed for all Masters, Pilots, Ketches, Hoyer, and Smacks, who are to attend the Fleet, and to give them notice of the Roads, Coasts, Sands, Rocks, and the

*Artic. 24.*

*Artic. 25.*

the like, and they have particular stations allotted them, and orders given, that if they shall find less water then such a proportion, they then give a signall as they are directed to give, and continue their signalls till they are answer'd from the Capitall Ships.

But in time of Fight, they generally lay away their head from the Fleet, and keep their lead, and if they meet with such a proportion of water as is within their directions, they are to give such signal as they receive Orders for, and stand off from the danger; but the wilful burning of any Ship or Magazine-store of powder, Ship-boat, Ketch, Hoy or Vessel, or Tackle, or furniture thereunto belonging, not appertaining to an Enemy or Rebel, shall be punished with death.

XXV. There are other faults often committed by the Crew, the which the Law does punish, as a quarrelling a Ship-board, using provoking speeches tending to make quarrel or disturbance<sup>a</sup>, murders, wilful killing of any Man<sup>b</sup>, Robbery, Theft<sup>c</sup>, and the unnatural sin of Sodomy and Buggery, committed with Man or Beast, all which, and all other faults and misdemeanors are punished with death, or according to the Laws and Customs in such cases used at Sea<sup>d</sup>; and when any Persons have committed any of the offences particularly mentioned in the Stat. of 13 Car. 2. Cap. 9. and contained in the Articles or any others, and for the which they shall be committed, the Provost Marshal is to take them into custody, and not suffer them to escape<sup>e</sup>, and all Officers and Sea-Men are to be aiding and assisting to Officers for the detecting and apprehending of offenders.

Touching the punishments that the Roman Generals used to their Souldiers, when they were at a Court Marshal found faulty, they were commonly proportioned according to the offence committed: Sometimes they were easy, of which sort were those which only brand the Souldier with disgrace; others were those that came heavy on the Person or Body; to the first belonged a shameful discharging or casheering<sup>f</sup> a Mariner or Souldier from the Army, and generally lookt on as a matter of great disgrace, which punishment remains at this day for offences as well in England, as in most parts: A second

was

Artic. 37.

Artic. 23.

Art. 28.

Art. 29.

[a Art. 33.

[b Art. 31.

<sup>e</sup> Ignominiosa  
missio.

was by stopping of their \* Pay, such Souldiers which suffered this kind of mulct, were said to be *Ære diruti*, for that *Æs illud diruebatur in fiscum, non in Militis sacculum*; the which is and may at this day be inflicted, especially on such as shall wilfully spoil their Arms, and the like sort of offences: A third was a Sentence enjoyn'd on a Souldier to resign † up his Spear, for as those which had atchieved any Noble Act, were for their greater Honour, *Hasta pura donati*, so others for their greater disgrace were inforc'd to resign up that Military Weapon of Honour: A fourth sort of punishment was, that the whole Cohort, which had lost their *Banners* or *Standards*, either in the Fields or at Sea, were inforc'd to eat nothing but Barley bread, being deprived of their allowance in Wheat, and every *Centurion* in that Cohort had his Souldiers belt or girdle taken from him, which was no less disgrace among them then the degrading (among us) one of the *Order of the Garter*: for petty faults they generally made them stand bare-footed before the *General's Pavilion*, with long poles of 10 foot in length in their hands, and sometimes in the sight of the other Souldiers to walk up and down with turfs on their necks, sometimes carrying a beam like a fork upon their shoulders round the Town; the last of their punishments, was, the opening of a Vein or letting them blood in one of their arms, which generally was inflicted on them who were too hot and bold.

The great Judgments were to be beaten with rods, which was generally inflicted on those who had not discharged their Office, in the sending about that *Table* called *Tessera*, wherein the Watch-word was written, or those who had stoln any thing from the Camp, or that had forsaken to keep Watch, or those that had born any false witness against their Fellows, or had abused their Bodies by Women, or those that had been punished thrice for the same fault, sometimes they were sold for bond-Slaves, beheaded and hang'd: But the last which was in their mutinies, the punishment fell either to Lots, as the tenth, twentieth, and sometimes the hundredth Man, who were punished with Cudgelling, and with these punishments those in *England* have a very near affinity,

\* *Fraudat. Siquidem. Rofin. Ant. Rom. lib. 10. c. 25.*

† *Censo Hæ. Paria.*

*Godwin Antiq. Rom. fo. 1279*

*Lipp. de milit. Rom. lib. 5. Dial. 18;*



the like, and they have particular stations allotted them, and orders given, that if they shall find less water then such a proportion, they then give a signall as they are directed to give, and continue their signalls till they are answer'd from the Capitall Ships.

But in time of Fight, they generally lay away their head from the Fleet, and keep their lead, and if they meet with such a proportion of water as is within their directions, they are to give such signal as they receive Orders for, and stand off from the danger; but the wilful burning of any Ship or Magazine-store of powder, Ship-boat, Ketch, Hoy or Vessel, or Tackle, or furniture thereunto belonging, not appertaining to an Enemy or Rebel, shall be punished with death.

Artic. 37.

Artic. 23.

Art. 28.

Art. 29.

XXV. There are other faults often committed by the Crew, the which the Law does punish, as a quarrelling a Ship-board, using provoking speeches tending to make quarrel or disturbance<sup>a</sup>, murthers, wilful killing of any Man<sup>b</sup>, Robbery, Theft<sup>c</sup>, and the unnatural sin of Sodomy and Buggery, committed with Man or Beast, all which, and all other faults and misdemeanors are punished with death, or according to the Laws and Customs in such cases used at Sea<sup>d</sup>; and when any Persons have committed any of the offences particularly mentioned in the Stat. of 13 Car. 2. Cap. 9. and contained in the Articles or any others, and for the which they shall be committed, the Provost Marshal is to take them into custody, and not suffer them to escape<sup>e</sup>, and all Officers and Sea-Men are to be aiding and assisting to Officers for the detecting and apprehending of offenders.

[a Art. 33.

[b Art. 31.

<sup>e</sup> Ignominiosa  
missio.

Touching the punishments that the Roman Generals used to their Souldiers, when they were at a Court Marshal found faulty, they were commonly proportioned according to the offence committed: Sometimes they were easy, of which sort were those which only brand the Souldier with disgrace; others were those that came heavy on the Person or Body; to the first belonged a shameful discharging or casheering<sup>f</sup> a Mariner or Souldier from the Army, and generally lookt on as a matter of great disgrace, which punishment remains at this day for offences as well in England, as in most parts: A second

was

was by stopping of their \* Pay, such Souldiers which suffered this kind of mulct, were said to be *Ære diruti*, for that *Æs illud diruebatur in fiscum, non in Militis sacculum*; the which is and may at this day be inflicted, especially on such as shall wilfully spoil their Arms, and the like sort of offences: A third was a Sentence enjoyn'd on a Souldier to resign † up his Spear, for as those which had atchieved any Noble Act, were for their greater Honour, *Hasta pura donati*, so others for their greater disgrace were inforc'd to resign up that Military Weapon of Honour: A fourth sort of punishment was, that the whole Cohort, which had lost their *Banners* or *Standards*, either in the Fields or at Sea, were inforc'd to eat nothing but Barley bread, being deprived of their allowance in Wheat, and every *Centurion* in that Cohort had his Souldiers belt or girdle taken from him, which was no less disgrace among them then the degrading (among us) one of the *Order of the Garter*: for petty faults they generally made them stand bare-footed before the *General's Pavilion*, with long poles of 10 foot in length in their hands, and sometimes in the sight of the other Souldiers to walk up and down with turfs on their necks, sometimes carrying a beam like a fork upon their shoulders round the Town; the last of their punishments, was, the opening of a Vein or letting them blood in one of their arms, which generally was inflicted on them who were too hot and bold.

The great Judgments were to be beaten with rods, which was generally inflicted on those who had not discharged their Office, in the sending about that *Table* called *Tessera*, wherein the Watch-word was written, or those who had stoln any thing from the Camp, or that had forsaken to keep Watch, or those that had born any false witness against their Fellows, or had abused their Bodies by Women, or those that had been punished thrice for the same fault, sometimes they were sold for bond-Slaves, beheaded and hang'd: But the last which was in their mutinies, the punishment fell either to Lots, as the tenth, twentieth, and sometimes the hundredth Man, who were punished with Cudgelling, and with these punishments those in *England* have a very near affinity,

\* *Fraudat*  
*stipendii. Rosin.*  
*Ant. Rom. lib.*  
*10. c. 25.*

† *Censo* *Hæ-*  
*stia.*

*Godwin Antiq.*  
*Rom. fo. 127.*

*Lipp. de militi*  
*Rom. lib. 5.*  
*Dial. 18.*

as cleansing the Ship, loosing pay, ducking in the Water, beaten at the Capsons head, hoisted up the main yard end with a shovel at their back, hang'd, and shot to death, and the like.

XXVI. The *Admiral* may grant Commissions to inferior *Vice-Admirals* or *Commanders in chief* of any Squadron of Ships, to assemble *Court Martials*, consisting of *Commanders* and *Captains*, for the Tryal and Execution of any of the offences or misdemeanours which shall be committed at Sea; but if one be attainted before them, the same works no corruption of Blood or forfeiture of Lands; nor can they try any Person that is not in actual Service and pay in *His Majesty's* Fleet and Ships of War.

57 H. 8. fo. 4.

13 Car. 2.  
Cap. 9.

But in no case where there is Sentence of death, can the execution of the same be without leave of the *Lord Admirall*, if the same be committed within the narrow Seas; yet this does not extend to mutiny, for there in that case the party may be executed presently.

All offences committed in any voyage beyond the narrow Seas where Sentence of death shall be given upon any of the aforesaid offences, execution cannot be awarded nor done, but by the Order of the Commander in chief of that Fleet or Squadron, wherein Sentence of death was passed.

XXVII. The Judge Advocate hath power given by the words of the Statut, to administer an Oath in order to the Examination or Tryal of any of the offences mentioned in the Stat. of 13 Car. 2. Cap. 9. and in his absence, the *Court Marshall* has power to appoint any other Person to administer an Oath to the same purpose.

This Statut enlarges not the power and and jurisdiction of the *Admiral* any further, then only to the above mentioned offences in no case whatsoever, but leaves his authority as it was before the making of this Statut.

Nor does it give the *Admiral* any other or further power to enquire and punish any of the above-mentioned offences, unless the same be done upon the main Sea, or in Ships or Vessels, being and hovering in the main stream of great Rivers, only beneath the Bridges of the same Rivers nigh to the Seas, within the \* jurisdiction of the *Admiralty*, and in no other place whatsoever.

\* 15 R. 2.

Cap. 3.

XXVIII

XXVIII. As Souldiers and Mariners for the honour and safety of the Realm, do expose dayly their lives and limbs, so the Realm hath likewise provided for them, in case they survive and should prove disabled or unfit for Service, a reasonable and comfortable maintainance to keep them; the which the Justices of the Peace have power yearly in their *Easter Sessions* to raise by way of a Taxe, for a weekly relief of maimed Souldiers and Mariners, *Stat. 43 Eliz. cap. 3.*

The maimed Souldier or Mariner must repair to the *Treasurer* of the County where he was prest, if he be able to travel; if he was not, then to the *Treasurer* of the County where he was born, or where he last dwelt by the space of three Years; but if he proves unable to travel then to the *Treasurer* of the County where he lands.

He must have a Certificate under the chief Commander, or of his Captain, containing the particulars of his hurt and Services.

The allowances to one not having been an Officer, is not to exceed ten pound *per annum*;

Under a Lieutenant ——— 15, 3

A Lieutenant ——— 20, 3

Till the Mariner arrives at his proper *Treasurer*, they are to be relieved from *Treasurer* to *Treasurer*, and when they are provided for, if any of them shall go a begging or couterfeit Certificats, they shall suffer as common rogues, and loose their Pensions: Over and above this provision, *His Sacred Majesty* hath provided a further supplyment for his maimed Mariners and Souldiers disabled in the Service, which is issued out of the *Chest* at *Chatham*, and constantly and duely pay'd them; and for his Commanders, Officers and others that served aboard, he, of his Royal Bounty, hath given to those that bear the character of War, and purchase the same by their fidelity and valour, a pious Bounty called *Smart-Money*, over and above their Pay.

XXIX. The wisdom of the *Romans* was mightily to be commended, in giving of *Triumphs* to their *Generals* after their returns, of which they had various sorts; but the greatest was when the *General* rid in his *Chariot*, adorned and crowned with the Victorious Laurel, the *Senators* with the best of the *Romans* meeting him, *Vide Salust. in Paucis. Leg. rerum deprec. Ca. de Triumph. Dion. Halicar. nouis lib. 2.*



his Souldiers, (especially those who by their valoor had purchast Coronets, Chains and other Ensigns of reward for their conduct and courage) following him: but what alas! could these to the more sober represent, any other but horror since, the centers from whence the lines were drawn, could afford nothing but death, slaughter and desolation on those who had the Souls and Faces of Men; and if it were possible that that Blood which by their Commissions was drawn from the sides of Mankind, and for which they made those Triumphs could have been brought to *Rome*, the same was capable of making of a Source great as their *Tiber*; but *Policy* had need of all its Stratagems to confound the Judgement of a Souldier by excessive Praises, Recompenses and Triumphs, that so the opinion of wounds and wooden-legs might raise in him a greater esteem of himself, then if he had an entire body. To allure others something also must be found out handsomely, to cover wounds and affrightments of death; and without this *Cæsar* in his Triumph, with all his Garlands and Musick, would look but like a victime: but what sorrow of heart is it to see passionate Man, a ray of Divinity, and the joy of Angels, scourged thus with his own Scorpions? and so fondly to give himself alarms in the midst of his innocent contentments, as they of *Holland* but yesterday in the midst of their triflique and recreations did (by the denying *His Sacred Majesty* his Right, even that right the which his Ancestors had with so much glory acquired,) pul on their heads a War, which that mighty *Reipublique* by their greatest industry and wisdom hath not been yet able to quell (the colerickness of War (whereby the lustfull heat of so many hearts is redoubled) stirs up the lees of *Kingdoms* and *States*, as a tempest doth weeds and slimy seedment from the bottom to the top of the Sea, which afterwards driven to the shoare, together with its foam, there coverts Pearls and pretious Stones: and though the Canon seems mad by its continual firing, and the Sword reeking hot by its dayly slaughters, yet no good Man doubts but they even they will wheather out those storms, & in the midst of those mercyleless instruments, find an *inculpatatutela*, who love justice, exercise charity, and put their trust in the *Great Governour of all things*.

CHAP.

## CHAP. XV.

### Of Salutations by Ships of War, and Merchant Men.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of salutation, how esteem'd by some in this later age.</p> <p>II. Of the same pay'd in all ages as an undoubted marke of Sovereignty of this Empire.</p> <p>III. Of those Seas where this right is to be pay'd to the King of England's Flag.</p> <p>IV. In what manner the King of England holds this Right, and by whom to be pay'd.</p> <p>V. Of those that shall neglect or refuse to do the same, how punish'd and dealt withall.</p> <p>VI. Where his Majesty of Great Britain's Ships are to strike their Flaggs, and where not.</p> <p>VII. Of the saluting of Ports, Castles, Forts, how the same is to be done, and on what terms.</p> <p>VIII. Of Ships of War their saluting their Admiral and Commanders and Chief.</p> <p>IX. Of Ambassadors, Dukes, Noblemen, and other Persons of quality, how to be saluted coming aboard and landing.</p> | <p>X. The Admirals of any forraign Nation, if met withall, how to be saluted and answered.</p> <p>XI. Of the Men of War or Ships of Trade of any forraign Nation, saluting his Majestie's Ship of War, how to be answered.</p> <p>XII. Of the saluting of his Majestie's own Forts and Castles, and when the salute cease.</p> <p>XIII. Of the objection that seems to be made against the necessity of such Salutations.</p> <p>XIV. Why Kingdoms and States attributes the effects not the cause of Rights to prescription.</p> <p>XV. That Kingdoms and Reipubliques ought not to be disorder'd for the defect of Right, in presumption, and the objection in the 13 S. answer'd.</p> <p>XVII. The inconveniency of war, and the justifike causes of the same.</p> <p>XVIII. Of the causes not justifiable in war.</p> <p>XIX. Of Moderation, and the utility of Faith and Peace.</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **A**S reforming Powers in all Ages, made it their chiefeft work to take down the great Colossues, and whatever else might be ombragious in the excrescences of Civile Pompe; so we had some in this Age, who, by a new art of levelling, thought nothing could be rightly mended, and they planted unless the whole piece ravelled out to the very end, and that all intermediate greatness between Kings and them, should be crumbled even to the dust, where all lying level toge-

## Of Salutations.

ther as in the first Chaos, spades ought even to be put into the hands of those who were heretofore adorned with Scepters, all outward tokens of honour and esteem, which even from the first institution of Society seemed by an uninterrupted stream to be continued down to posterity, (even amongst the most barbarous Nations) was by them totally deny'd; the Hand, the Hat, the Knee (being no other but outward signs of an inward respect) being esteemed equal with *Idolatry*; but that unhappy brood, to whom whatsoever was crooked seemed straight, and what was dark to them appears light, are now not to be accounted Men, with whom the question may admit of a debate whether *Salutation* is innocent, necessary and praise-worthy, since nothing of reason can be found in the foundation of their Religion, Honesty or Conscience. — Therefore this Discourse is directed to Men:

II. First, it is evident by what hath been said, that the *British Seas* before the *Roman Conquest*, ever belonged to the *Isle of Great Britain*, they alwaies claiming and enjoying the sole Dominion and Sovereignty of the same, which afterwards accrued to the *Romans* by Conquest, and from them translated with its *Empire* to the succeeding *Saxon, Danish* and *Norman* Successors, and in all the Reigns of those Princes there was alwaies some markes of Sovereignty pay'd, wherein the right of the same was evinc't and acknowledged.

III. Now those Seas which this Salutation or Duty of the Flagg are to be pay'd, are the four circumjacent Seas, in which all Vessels whatsoever are to pay that Duty, according to the Custom of the same, and the Ordinance of King *John*: How far this Right is payable, appears in the fourth Article in the Peace made lately between His Majesty and the *States General of the United Provinces*, in these words:

— That whatever Ships or Vessels belonging to the said United Provinces, whether Vessels of War or other, or whether single or in Fleets, shall meet in any of the Seas from Cape Finisterre to the middle point of the Land Van Staten in Norway, with any Ships or Vessels

Vessels belonging to his Majesty of Great Britain, whether those Ships be single or in great number, if they carry his Majesty of Great Britain's Flagg or Jack, the aforesaid Dutch Vessels or Ships shall strike their Flagg and lower their Top-sail, in the same manner, and with as much respect as hath at any time, or in any place, been formerly practised towards any Ships of his Majesty of Great Britain, or his Predecessors by any Ships of the States General, or their Predecessors.

IV. Now, his Majesty holds not this *Salutation* or Respect, by virtue of the League or of the Article, but as the same is a Right inherent to the *Empire of Great Britain*; and therefore in the first part of the Article it is declared in these words:

—That the aforesaid States General of the United Provinces, in due acknowledment on their part of the King of Great Britain's *R I C H D*, to have his Flagg respected in the Seas hereafter mentioned, shall and do declare, and agree:—

Now this Right extends and subjects all Nations whatsoever that shall pass through those Seas, and between those places meeting with any of his Majesty's Ships of War, bearing his Flagg, Jack, or Cognizance of Service, to strike their Top-sail, and take in their Flagg, in acknowledgement of His Majesty's Sovereignty in those Seas, and if any shall refuse to do it, or offer to resist, they may be compelled *vis manu & forti*, for his Majesty's Honour is by no means to receive the least diminution.

V. If therefore any of his Majesty's Subjects should be so negligent or forgetful to pay that obeissance, when it may be done without losse of the Voyage, they are to be seized on, and brought to the Flagg, to answer the contempt, or else the *Commander* may remit the Name of the Ship, *Commander* or *Master*, as also the place from whence, and the Port to which she shall be bound to the Admiral; however before she is dismissed, she must pay the charge of the shot, that her negligence or forgetfulness occasioned, and afterwards may be indicted for the same, and severely punished.

VI. In His Majesty's Seas, none of his Ships of War



are to strike to any, and that in no other part no Ship of His Majesty is to strike her Flagg or Top-sail to any Forraigner, unless such forraign Ship shall have first struck, or at the same time have strike her Flagg or Top-sail to his Majesty's Ships.

VII. But if any of the King of *Englands* Ships of War shall enter into the Harbour of any Forraign Prince or Sate, or into the roade within shot of Canon of some Fort or Castle, yet such respect must be pay'd, as is usually there expected, and then the *Commander* is to send a shore, to inform himself what return they will make to this Salute; and that if he hath received good assurance, that his Majesty's Ships shall be answer'd Gun for Gun, the Port is to be saluted, as is usuall, but without assurance of being answered by an equal number of Guns, the Port is not to be saluted: And yet in that very respect before the Port is to be saluted, the Captain ought to inform himself, how Flaggs (of the same quality with that he carrys) of other Princes have been saluted there, the which is peremptorily to be insisted on, to be saluted with as great respect and advantage as any Flagg (of the same quality with the Captains) of any other Prince hath been saluted in that Place.

VIII. A Captain of a Ship of the second rate, being neither Admirall, Vice-Admiral, nor Reer-Admiral, at his first coming and saluting his Admiral or Commander in chief, is to give 11 Pieces, his Vice-Admiral nine, and his Reer-Admiral seven, and the other proportionably less by two, according to their Rancks; but the Commander or Captain of a Ship is not to salute his Admiral or Commander in chief, after he hath done it once, except he hath been absent from the Flagg two Months.

*Artic. 38.*

XI. When a Ship of the second rate, shall carry any Ambassador, Duke, or Nobleman, at his coming aboard, he is to give eleven Pieces, and at his landing fifteen; and when he shall carry a Knight, Lady or Gentleman of Quality, at their coming aboard he is to give seven, and at the landing eleven; and the other Ships are to give  
less

less by two, according to their Ranks and number of Ordinance.

X. When an Admiral of any forraign Nation is met with, he is to be answered with the like number by all the Ships he shall salute; if a Vice-Admiral, the Admiral is to answer him with twelve less; but the Vice-Admiral and Reer-Admiral, and as many of the rest as he shall salute, shall give him the like number: if a Reer-Admiral, then the Admiral and Vice-Admiral, to answer him with two less; but if he shall salute the Reer-Admiral or any other, they are to answer him in the like number.

XI. When a Man of War or Merchant-Man of another Nation, or of our own, salute any of the King's Ships, he is to be answer'd by two less.

XII. When any of the Captains of his Majesty's Ships shall have occasion to salute any of the King's Castles, he is to give two Guns less then they are directed to give upon saluting their Admiral or Commander in chief, as aforesaid: But this extends only in time of Peace, for if War is begun, no Guns ought to be fired in Salutes, unless to the Ships or Castles of some forraign Prince or State in Amity.

XIII. Those duties or obligations being laid on *Commanders*, they consist of two parts, the one is that ancient prescription, which the *Crown of England* claims by virtue of the Sovereignty of that *Empire*, the other is but that respect, which is pay'd as visible marks of *Honour* and *Esteem*, either to Kingdoms or Persons publique or private, to whom these several Commands are to be observed; and yet in these which are both innocent and harmless of themselves, yet we wont not those who being empty, of all that may be called good, want not malice to start up words, *wherefore should the lives of Men, even Christian Men, be exposed to death and slaughter for shadows* (as they call them) *the right of salutation or Complement*, being no other in their opinion.

XIV. Admitting therefore that the evidence of original Compacts and Rights stand at such remote distances from us, that they are hardly discernable, and that the principal of Civil things, as well as Natural, is sought for

in a Chaos or confusion; so that the evidence of ancient facts *vestigia nulla retrorsum*, there being no infallible marks of their preexistence (one step doth so confound and obliterate another) and that time it self is but an imagination of our own and intentional not a real measure for actions, which pass away concomitantly with that measure of time, in which they were done, for which reason we talk of ancient things, but as blind Men do of Colours: Notwithstanding prescription is supposed by most to hold out such an evidence, that as they say, \* it ought to silence all Counterpleas in all Tribunals, and by the present allowance which is indulged to it, it either proves a good or cleans a vitiated title; and this Prerogative in the Civil constitution of the World hath this Power in the Civil constitution of the World, and for quietness sake, that what it cannot find, we grant it a power to make.

\* Coke Comm.  
on Littleton,  
fo. 25.

XV. Yet if we examine all this strictly at the two great Tribunals, the external and the internal, and argue the *ius* of it, as Statesmen and Lawyers do, we can then raise the argument of it no higher in the external or temporal Court, then only this, ——— *That it is very convenient it should have the effects of Right, lest properties and dominion of things should be uncertain, and the apparent negligences of time: Owners should be punished, and controversies have a speedy end: States looking more after publique repose and quiet, then after strict virtues, and more after those things which are ad alterum, then that which concerns a Mans own self; for, say they, The Gods look well enough after their own injuries, States meddle not so much with great prodigalities, as in petty Larcenies, our chiefest Liberty, Priviledges or Prerogative in this World, consisting only in an uncountroulable Right, which we have to undo our selves, if we please. Certainly if we plead at the other Tribunal, as conscientious Lawyers, we must give our ultimate resolution, out of that Law, *Quæ inciditur non ære, sed animis*: which is not ingraven in Tables of brass, but in the Tables of our Souls; for the Rules of Law tell us, *Quæ principia vitiantur ex post facto, reconvalescant*, and that prescription or usu-caption (which is but the lapse of so much time.)*

*Deorum inju-  
ria Diis Cura.*

time) hath the power to make *Wrong a Right*; yea, to change the morality of an action, and turn quantity into quality: upon the result of all which taking for granted, what those stubborn people do hold, that instead of being a right, or a certain cause or proof of it, it only makes a shadow or an opinion of right.

XVI. And when we have taken those people by the hand, and with eagerness run with them to the very bottom and end of the line, and there find nothing, we are but in *Pompey's* astonishment, when after his Conquest of *Jerusalem*, when he had with such reverence and curiosity visited the *Sanctum Sanctorum*, and found nothing there but a paire of Candle-sticks and a Chair, in which there was no God sitting; yet for all this mistake, he would not (as *Josephus* saith) disorder or rob the Temple, which he took by force of Armes, because *the very opinion of Religion, hath something of Religion.* (which made *Jacob* accept of *Laban's* Oath by an *Idol*) so ought not we for defect of giving the causes of the inception of Prescription, or of the Right in Prescription, disorder a State, or be the occasion of setting of two Nations at enmity; nay, though in conscience we are satisfy'd that it contains but the opinion or shadow of Right: and as to the involving the lives of the innocent, there is no such thing in the matter, for there is not required any thing which they do not owe, nor are they designed to death; but if the cause be such, that they that are innocent must perish, that is, be exposed to death by their Rulers, because they obstinately will not yield that which is right, but will involve the lives of their innocent Subjects by force, to defend that which is wrong, such guilty Governors must answer for the defect of their own evil actions: on the other hand, there can be no doubt made, but he that hath an undoubted right, being a Sovereign, the Subjects partake in the same, and the indignity offered to him, they immediately become partakers in the suffering, for the satisfaction of which they may, yea, are obliged both by the Law of God and Nations to seek reparation (if their Prince shall command) *vis manu & forti*, by the hazard of their Blood and Lives.

L

XVII. On



XVII. On the other hand, as War introduces the greatest of evils, viz. the taking away of Mens lives, and that which is equivalent to life; so right Reason and Equity tells us that, it ought not to be undertaken without the greatest cause, which is the keeping of our lives, and that without which our Lives cannot be kept; or if they should be kept, yet they would not be of any value to us, seeing there may be a life worse then death, even Captivity; wherefore as we are forbidden to go to Law for a little occasion, so we are not to go to War, but for the greatest: Now those things that are equivalent to a Mans life, are such whom *Almighty God* appointed the same equall punishment as well as to those of murderers, and such as were breakers into Houses, breakers of Marriage Fidelity, Publishers of false Religion, and those who rage in unnaturall lusts, and the like.

However, before Mens Persons or Goods are to be invaded by War, one of these three conditions is requisite.

1. Necessity, according to the tacite contract in the first dividing of Goods, as hath been already observed.

2. A Debt.

3. A Mans ill merits, as when he doth great wrong or takes part with those who do it.

Against which If any thing is committed, War may be commenc't, nor is the same repugnant to the Laws of Nature; that is whether the thing may be done not unjustly, which hath a necessary repugnance to the rational and social Nature; among the first principals of Nature, there is nothing repugnant unto War; on the other hand there is much in favour of it, for both the end of War, the conservation of Life and Members, and the keeping and acquiring of things usefull unto Life is most agreeable to those principalls: And if need be to use force to that purpose is not disagreeable, since every Living thing hath by the gift of Nature strength to the end it may be able to help and defend it self; besides reason and the Nature of Society inhibits not all force, but that which is repugnant to Society, that is, which depriveth another of his right; for the end of Society

is,

*Ulpian. Leg. 1.  
Sect. vim. vi.  
D. de vi, & vi  
arma.*

is, that every one may enjoy his own, this ought to be and would have been; though the Dominion and property of possessions had not been introduced for life members and liberty, would yet be proper to every one; & therefore without injury could not be invaded by another, to make use of what is common, and spend as much as may suffice nature, would be the right of the occupant, which right, none could without injury take away. And this is proved by that Battle of *Abraham* with the four Kings, who took Arms without any Commission from GOD, and yet was approved by him; therefore the Law of Nature was his warrant, whose Wisdom was no less eminent than his Sanctity, even by the report of *Heathens*, *Berosus* and *Orpheus*; nor is the same repugnant to the *Hebrew Law* or *Gospel*, as the same is most excellently proved by the *Incomparable Grotius*. \* *De Jure Belli ac Pacis lib. 1. cap. 1.*

XVIII. On the other hand, the fear of uncertain danger, as building of Forts, Castles and Ships, and the like, though the former be on Frontiers, the refusing of Wives (when others may be had) the changing of Countreys either barren or Morish, for more fertile or healthfull, which may justly be done: as the case of the Old *Germans*, as *Tacitus* relates; so likewise to pretend a Tittle to a Land because it was never found out or heard of before, that is if the same be held by a People that are under a Government; nay, though the Government be wicked or think amiss of GOD, or be of a dull wit; for invention is of those things that belong to none, for neither is Moral Virtue, or Religious, or Perfection of Understanding required to Dominion; but yet if a new Place or Land shall be discovered, in which are a People altogether destitute of the use of Reason, such have no Dominion, but out of Charity only is due unto them what is necessary for life; for such are accounted as Infants or Mad-Men, whose right or property is transferred, that is the use of the same, according to the Laws of Nations, in such case a charitable War may be commenc'd. *Victor de Ind. lib. 1. n. 31.*

XVIII. To prevent all the sad calamities that must inevitably follow the ungoverned hand in War, Faith must by all means be laboured for; for by that, *Victor de Jure Belli n. 5, 6, 7.*  
no

Procopius Per-  
sec. 2.

not only every Common-wealth is conserved, but also that greater Society even of Nations, that once being taken away, then farewell Commerce, for that must be then taken away from Man; for Faith is the most Sacred thing that is seated in the breast of Man, and is so much more religiously to be kept by the Supream Rulers of the World; by how much more they are exempted from the punishment of their sins here then other Men, take away Faith, and then Man to Man, would be as Mr. Hobbs observes, even wolves; and the more are Kings to embrace it, first for Conscience, and then for Faith and Credit sake, upon which depends the authority of their Government. The Ambassadors of Justinian, addressed their Speech to Chosroes after this manner, *Did we not see you here with our own eyes, and pronounce these words in your ears, we should never have believed that Chosroes the Son of Cabades, would bring his Army, and enter forceably into the Roman bounds, contrary to his League, the only hope left to those that are afflicted with War; for what is this, but to change the Life of Men into the life of wild Beasts? take away Leagues, and there will be eternall wars, and wars without end will have this effect to put Men besides themselves, and divest them of their Nature.* If then a safe Peace may be had, it is well worth the releasing of all or many of the injuries, losses and charges; according to that in Aristotle, *Better it is to yield some of our goods to those that are more potent, then contend with them, and loose all:* for the common chances of war must be considered, which if so, the scope of the principall part of this First Book may be avoided, and we let into that of Traffique and Commerce.

*The end of the First Book.*

## C H A P. I.

### Of the various Rights and Obligations of Owners and Partners of Ships in cases private.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of Navigation in general.</p> <p>II. Of Owners their several Powers over those Vessels they are Partners in.</p> <p>III. where Ships are obliged to make a Voyage before they can be sold; and what may be done when part protest against a Voyage.</p> <p>IV. The Master how brought in by the Owners, and the reason why in such a manner.</p> <p>V. where the Owners ought to be repaired for the Damages of the Master.</p> <p>VI. where Ships broke in pieces determine the Partnership as to the Vessel; and where not.</p> <p>VII. where a Ship shall be the Builders, and where only his</p> | <p>whose Materials she was erected with.</p> <p>VIII. where Property of the Vessel altered changes not that of the Boat.</p> <p>IX. A Ship for the act of Piracy becomes forfeited; yet if bona fide sold, where the Property may be questioned.</p> <p>X. Moneys borrowed by the Master, where the same obliges the Owners, and where not.</p> <p>XI. where he that obtains an unlawful possession of a Ship, shall answer the full Freight to the Owners.</p> <p>XII. And where the Owners shall have their Freight though they lose their Lading.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **I**N the precedent Book having observed something of the Rights of Persons and of Things in a state of Nature, and how necessarily they came at first to be appropriated, and how equitably they are now continued in the possession of those to whom they are assigned by the *donation* of others, and maintained or destroyed by the equity of those various Lawes which rules and governs them, all which is justified by the Scripture it self; It may not now seem improper to examine the *private causes* changing the same, and of the contingencies and advantages that wait on that which we properly call Commerce.

The Great Creator no sooner had finished his Mighty Work, and given Man that Dominion which he now enjoys as well over the Fish in the Seas, as the Beasts in



the Field, he was not forgetful of bestowing on him those things which were necessary for the government and support of the same, creating at the same time Trees which grow as it were spontaneously into Vessels and Canoes, which wanted nothing but launching forth to render them useful for his accommodation, which afterwards he by his divine Genius (inspired by that Mighty One) finding Materials, hath since so Compleated and Equipt as to render it the most beautiful and stupendious Creature (not improperly so called) that the whole World can produce, which being not retarded by lett of Winds, or other contingent Accidents, submits it self to plow the unknown paths of that vast Element, to brave all Encounters of Waves and Rocks, to fathom and survey the vast emensities of the very World it self, to People, Cultivate and Civilize uninhabited and Barbarous Regions, and to proclaim to the Universe the Wonders of the *Architect*, the Skill of the *Pilot*, and above all, the Benefits of *Commerce*, so that it is no wonder at this day to find Nations contending who should surpass each other in the Art of Navigation, and to Monopolize if possible the very Commerce and Trade of the World into their hands; and that, all by the means of this most Excellent Fabrick.

*Aretin. post  
Joan. Faber. in  
S. item exer-  
citor. num. 3.  
Instit. de oblig.  
que ex quasi  
delict.*

II. Hence it is, that Ships and Vessels of that kind being originally invented for use and profit, not for pleasure and delight, to plow the Seas, not to lye by the walls, to supply those of the Mountains as well as those on the Sea Coasts.

Therefore upon any probable design the major part of the Owners may even *against the consent* though not without the *privity* and knowledge of the rest, Freight out their Vessel to Sea.

If it should so fall out that the major part *protest* against the Voyage, and but one left that is for the Voyage, yet the same may be effected by that party, especially if there be *equality* in Partnership.

*Leg. Fin. C.  
S. pro Socio &  
pos. inst. & D.  
eod.*

III. Owners by Law can no wayes be obliged to continue their paction or partnership without sundering; but yet if they will sunder, the *Law Maritime* requires some considerations to be performed before they can so do.

And

And therefore if the Ship be newly built and never yet made a Voyage, or is newly bought, she ought to be subject to one Voyage upon the common outread and hazard, before any of the Owners shall be heard to surrender and discharge their parts.

If it falls out that one is so obstinate that his consent cannot be had, yet the Law will enforce him either to hold, or to sell his proportion; but if he will set no price, the rest may outrigg her at their own costs and charges, and whatsoever Freight she earns, he is not to have any share or benefit in the same. But if such Vessel happens to miscarry or be cast away, the rest must answer him his part or proportion in the Vessel.

Some of the Part-Owners, the same is under such Proviso's, Cautions and Limitations as the Law in that case requires.

But if it should fall out that the major part of the Owners refuse to set out the Vessel to Sea, there by reason of the inequality they may not be compelled, but then such Vessel is to be valued and sold; The like where part of the Owners become deficient or unable to set her forth to Sea.

IV. The Master of the Vessel is elegable by the part-Owners not by the majority, yet he that is most able is to be preferred; The wisdom of the later Ages have been such, that few have gone out in that condition, but those as have commonly had shares or parts in the same Vessel. In the preferring therefore of a Master, his Ability and Honesty is to be considered, since on him rests the charge not onely of the Vessel, but of the Lading; their very Actions subiecting the Owners to answer for all damage that shall be sustained by him or his Marriners, be it in Port or at Sea, to the Lading or Goods of the Merchants or Laders, and they are made lyable as well by the Common Lawes \* of England, as the Law Maritime. †

V. If the Master commits offences either negligently or wilfully, he shall be responsible over to his Owners for the reparation of damage; nor are they bound to joyn, but may sever and sue apart as well by the Common

*Leg. in hoc parg. si conveniat pro Sco.*

*Bart. & Pauli in leg. hec distinctio §. cum fundum. ff. locat.*

*Such Vessels when Freight ed out against the grain of*

*Gloss. Leg. si navis & jurist in leg. utiq: para. culpe de rei indic. & leg. arboribus §. navis de usu fruct.*

*Leg. non abiter F. de usu & habi.*

*\* i8 H.6. num. 52.*

*† Co.4. Inst. 146.*

*Hill 23 Car. 2: B. R. Morse verius Slat.*

*† Nautic Camp. Stab. leg. 1: Sect. 3.*

† Hill. 26, 27  
Car 2. in B.R.  
Stanley versus  
Ayles.

Leg. inter sti-  
pulantem in S.  
Sacram. ff. de  
ver. oblig.

Leg. quod in  
S. fin. F. de  
leg.

Leg. Musinus ff.  
de rei venic. 3

ff. lib. 6. tit. 1.  
leg. 61.

Leg. si ex meis.  
ff. de acq. rer.  
dom. & leg. si  
convenerit S. si  
quis sic ff. de  
pign. act.

Leg. Marcellus  
in S. armamen-  
ta ff. de re vin-  
dicat.

\* Trin. 3 Jac.  
B.R. Rolls 1.  
part, Abridg.  
fo. 530.

Eald. in leg. cum proponas Code de nautic. e fenore num. 6.

Mich. 13 Jac.  
in E. R. Sir  
Rich. Bingley's  
Case. Rolls  
Abridg fo. 530

Law † as the Maritime; So likewise if the Ship hath earned Freight, and part of them receive their parts, the rest may bring their Action for their share without joyn- ing with the other.

VI. If a Ship be borke up or taken in pieces, with an intent to convert the same to other uses; if afterwards upon advice or change of mind, she be rebuilt with the same Materialls, yet this is now another, and not the same Ship; especially if the Keel be ript up or changed, and the whole Ship be once all taken a sunder and rebuilt, there determines the Partnership *quoad* as to the Ship. But if a Ship be ript up in parts, and taken a sunder in parts and repaired in parts, yet she remains still the same Vessel and not another, nay though she hath been so often repaired that there remains not one stick of the Original Fabrick.

VII. If a man shall repair his Ship with Plank or other Materialls belonging to another, yet the Ship main- taines and keeps her first Owners.

But if a man shall take Plank and Materialls belonging to another and prepared for the use of Shipping, and with them build a Ship, the property of the Vessel follows the Owners of the Materialls, and not the builder.

But if a man cuts down the trees of another, or takes Timber or Planks prepared for the erecting or repairing of a dwelling house, nay though some of them are for Shipping, and builds a Ship, the property follows not the Owners but the Builders.

VIII. If a Ship be sold together with her tackle, fur- niture, apparel, and all other her instruments thereunto belonging, yet by those words the Ships boat is not con- veyed, but that remains still in the Owners; so it is if the Ship be freighted out, and afterwards at Sea, she commits Piracy, the Ship is forfeited, but the Boat remains still to the Owners. \*

IX. If a Ship commits Piracy by reason of which, she be- comes forfeited, if before seizure she be *Bona-fide* sold, the property shall not be questioned, nor the Owners divested of the same.

X. If

X. If a Master shall take up Monys to mend or Victual his Ship where there is no occasion, (though generally the Owners shall answer the fact of the Master,) yet here they shall not, but onely the Master. But if there were cause of mending the Ship, though the Master spend the Mony another way, yet the Owner and Ship become lyable to the satisfaction of the Creditor; for it were very unreasonable that the Creditor should be bound to take upon him the care of the repairing the Ship, and supply the Owners roome, which must be so if it should be necessary for him, to prove that the money was laid out upon the Ship; so on the other hand, it stands with reason that he be sure that he lends his money on such an occasion, as whereby the Masters fact may oblige the Owners, which he can not do otherwise, unless he knows that the money borrowed was necessary for the repair of the Ship, and therefore if the Ship wanted some repairs, and a far greater and Extravagant sum was lent then was needful, the Owners shall not be lyable for the whole.

*Dig. lib. 14.  
tit. 1. §. 17.*

*Bridgemans  
Case, Hobart,  
fo. 10, 11.*

*Gloss. African.  
super eod. leg.  
& §.*

II. If a man gets possession of a Ship having no Title to the same, by the Law Maritime he shall answer such damage as the Ship in all probability might have earned; and the reason of that is, because the onely end of Shipping is the imployment thereof.

*Dig. lib. 6.  
tit. 1. §. 62. &  
l. 7. tit. 1. §. 12.  
§. 1. & Pa-  
pinion on the  
same Law.*

XII. A Ship is Freightied out, accordingly she receives in her lading pursuant to agreement, afterwards an Embargo happens, and the lading is taken as forfeited, yet the Owners shall notwithstanding receive Freight, for here is no fault in them, but only in the Merchant.

*Digest. lib. 19.  
tit. 2. §. 1.  
Scaevola on  
the same Law.*

Thus men from their Necessity and Safety having from hollow Trees, nay Reeds, Twiggs and Leather (for such were the rude beginnings of those stupendious things we now admire) advanced the Art to that degree, as to render it now the most usefullest thing extant; and as the Mathematicques, Astronomy, and other Sciences hath added to its security, so hath succeeding Ages from time to time provided Priviledges and Laws by which it hath alwayes been regulated and governed, the which upon all occasions, and in all Courts hath generally had a genuine construction as near as might be to the Marine Customes; and therefore at this day if a Ship be taken away or the Owners dispossessed, they may maintain an Action of Trover and Conversion for 8th or 16th part of the same, as well by the Common Laws of this Kingdome, as the Law Maritime.



## C H A P. II.

### Masters of Ships their Actions considered in reference to cases private and publique.

- I. *A Master or Skipper his Condition considered in reference to his Interest and Authority generally.*
- II. *Of Goods lost or imbezelled, or any other detriment happens in a Port, who shall answer.*
- III. *The Duty of Masters of Ships, as if they shall set Sayl after an Imbargo, who shall answer.*
- IV. *And of faults ascribed to him before departure in Tempestuous weather, staying in Port. &c.*
- V. *Over-charging or over-lading the Ship above the birth-mark, or receipt of such persons a Ship-board as may hazard the Lading.*
- VI. *Of Lading aboard in the Ships of Enemies, his own proving disabled.*
- VII. *Of shipping of Goods elsewhere then at the publique Ports or Keyes, and of taking in prohibited Goods.*
- VIII. *Of wearing unlawful Colours or Flaggs; and of yielding up his Ship cowardly if assaulted, where lyable, and where excused.*
- IX. *Of carrying fictitious Coquets and Papers, and refusing payment of Customs and Duties.*
- X. *Of setting Sayl with insufficient Tackle, and of taking in and delivering out with the like, and of his charge of Goods till safely delivered.*
- XI. *Of departing without giving Notice to the Customer.*
- XII. *Of Faults committed by Masters and Skippers at Sea.*
- XIII. *Rules in Law in the Charging him for Reparation of Damage.*
- XIV. *Of the Power and Authority that the Master hath in disposing Hipochicating or pledging the Ship, Furniture and Lading.*
- XV. *Where Masters are disabled, though in necessity to Impawn the Vessel.*
- XVI. *Where they may dispose of Vessel and Lading, and where not.*
- XVII. *What Vessels and Mariners the Master must have for Importing in or Exporting out of his Majesties Plantations in Asia, Africa and America.*
- XVIII. *What Ships may go from Port to Port in England.*
- XIX. *Ships not to import the Goods of any Country but of that from whence they are brought.*
- XX. *What time the Master shall be coming up after arrived at Gravesend, or at any other Port within the Realm, in order to his discharge.*
- XXI. *Of going from Port to Port within the Realm how provided.*
- XXII. *Of Goods prohibited to be imported from Netherlands or Germany in any Ships whatsoever.*

I. A Master of a Ship is no more then one who for his knowledg in *Navigation*, fidelity & discretion, hath the Government of the Ship committed to his care and management, and by the *Common Law*, by which properties are to be guided, he hath no property either general or special, by the constituting of him a Master; yet the Law looks upon him as an *Officer*, who must render and give an account for the whole charge when once committed to his care and custody, and upon failer to render satisfaction, and therefore if misfortunes happens, if they be either through negligence, wilfulness, or ignorance of himself or his Mariners, he must be responsible.

*Leg. 1. de exercit. Act.*

*Hob. Rep. fo. 111. Bridgeman's Case.*

II. If the fault be committed in any Port, Haven, River or Creek, or any other place which is *infra Corpus Comitatus*, the Common Law shall have Jurisdiction to answer the party damaged and not the Admiralty, \* but if the same be committed *super altum mare*, the Admiralty shall have Jurisdiction of the same; yet if it be on a place where there is *divisum imperium*, then according to the flux or reflux the Admiralty may challenge, the other of Common right belonging to the Common Law, according to the resolution given.

\* *Dowdall's case.*

*Coke lib 6.*

*fo. 47.*

And therefore so soon as Merchandises and other Commodities are put aboard the Ship, whether she be riding in Port, Haven, or any other part of the Seas, he that is *Exercitor Navis* is chargeable therewith; and if the same be there lost or purloyned, or sustaine any damage, hurt or loss, whether in the Haven or Port before, or upon the Seas after she is in her Voyage, whether it be by Mariners or by any other through their permission, he that is *Exercitor Navis* must answer the damage, for that the very lading of the goods aboard the Ship does Subject the Master to answer the same; and with this agrees the Common Law, where it was adjudged, that goods being sent aboard a Ship, and the Master having signed his Bills of Lading for the same; the goods were stowed, and in the night divers persons under the pretence that they were Press Masters entered the Ship and rob'd her of those goods,

*F. Naut. cap.*

*stab. leg. 1.*

*Stat. 2, 3, 6, 7.*

\* The which  
the Civil Law  
does some-  
times allow.

Morse versus  
Slue, Hill.  
23 Car.2. Re-  
gis, adjudged  
on a Special  
Verdict found  
at the Barr.

*Debet Exercitor  
omnium nauta-  
rum suorum  
frei liberi sint,  
five servi fa-  
ctum prestare,  
nec immerito  
factum eorum præstat cum ipse eos suo periculo  
adhibuerit sed non alias præstat quam  
in ipsam nave damnum datum sit, ceterum, si extra navim licet à nautis non præstabit,*  
Naut. Caup. Stabilit. Leg.1. Sect.7. debet exercitor.

Eod. Leg. debet  
Exercitor.

Digest. lib.9.  
2. tit. Leg.61.

† Leg. Oleron.  
Judg. 2.

goods, the Merchant brought an action at the Common Law against the Master, and the Question was, Whether he should answer for the same? for it was alledged on his part, That there was no default or negligence in him, for he had a sufficient guard, the Goods were all lockt up under hatches, the Theeves came as *Press-Masters* and by force robb'd the Ship, and that the same was *vis major*, \* and that he could not have prevented the same; And lastly, That though he was called Master or *Exercitor navis*, yet he had no share in the Ship, and was but in the nature of a Servant acting for a Salary. But notwithstanding it was adjudged for the Plaintiff, for at his peril he must see that all things be forth-coming that are delivered to him, let what accident will happen, (the Act of God, or an Enemy onely excepted) but for Fire, Theeves and the like, he must answer, and is in the nature of a Common Carryer; and that though he receives a Sallary, yet he is a known and publique Officer, and one that the Law looks upon to answer, and that the Plaintiff hath his Election to charge either Master or Owners, or both at his pleasure, but can have but one satisfaction.

If a Master shall receive Goods at the Wharf or Key, or shall send his Boat for the same, and they happen to be lost, he shall likewise answer both by the Maritime Law and the Common Law.

III. If Goods are laden a board, and after an Embargo or Restraint from the Prince or State he breaks ground, or endeavours to sayl away, if any damage accrues he must be responsible for the same. The reason is, because his Freight is due and must be paid, nay although the very Goods be seized as *bona contra bandos*.

IV. He must not sayl in Tempestuous weather, nor put forth to Sea without having first consulted with his company; † Nor must he stay in Port or Harbour without just cause when a fair wind invites his departure.

V. He

V. He must not over-charge or lade his Ship above the birth-mark, or take into his Ship any persons of an obscure and unknown condition without Letters of safe conduct.

V I. Nor ought he to lade any of his Merchants Goods aboard any of the Kings Enemies Ships, (admitting his own Vessel leaky or disabled) without Letters of safe Conduct, otherwise the same may be made prize, and he must answer the damage that follows the action.

Stat. 18 H.6.  
cap.8.  
l. ult. ad leg.  
Rhod. & leg.  
quum proponas  
C de Naut.  
fœnor.

Nor shall he come or sneak into the Creeks or other places when laden homewards, but into the Kings great Ports, (unless he be driven in by Tempest) for otherwise he forfeits to the King all the Merchandize, and therefore must answer.

Stat. 4 H.4.20.  
Leg. fin. parag.  
si propter neces-  
sitatem.

V II. Nor ought he to ship any Merchandize, but onely at the *Publique* Ports and Keyes.

Stat. 15 H.6.  
cap.

He must not lade any prohibited or unlawful Goods, whereby the whole *Cargo* may be in danger of Confiscation, or at least subject to seizure or surreption.

19 Eliz.cap.9.  
12 P. & M. 5.  
1 Jac. cap.25.

He may not set sayl without able and sufficient Marri-ners both for quality and number.

V III. He may not use any unlawful Colours, Ensigns, Pendants, Jacks or *Flaggs*, \* whereby his Ship or Lading may incur a Seizure, or the *Cargo* receive any detriment or damage.

\* Proclama-  
tion 25 Sept.  
26 Car. 2.  
Per leg. quum  
proponas ad  
leg. Rhod.

He must not suffer the Lading to be stolne or imbezled, if the same be, he must be responsible, unless it be where there is *vis major*, as if he be assaulted at Sea either by Enemies, Ships of Reprize, or Pyrats, there if no fault or negligence was in him, but that he performed the part of an honest faithful and valiant \* man, he shall be excused. Yet it hath been adjudged, That if a Merchant-man lyes in a Port or Haven, and a Pyrat, Sea Rover, or other Thieves enter her and overpower her men, and then rob her, yet the Master must be responsible; but if an Enemy enter and commit the depredation, there the Master is excused.

D. leg. in fin.  
& leg. si ven-  
dita peric. rei  
vend. & leg. 5.  
& 6. Naut.  
Caup.  
\* Stat. 16 Car.  
2. cap. 8.

I X. He must not carry any counterfeit Cosquets or other fictitious and colourable Ship Papers to involve the Goods of the Innocent with the Nocent.

Morse versus  
Slue, 23 Car.in  
B.R. Rott.

Nor

13 R.2. cap.9.  
leg.1. Cod. de  
Navib. non ex-  
cusand.



*Secund. fin. leg.  
ult. ad leg.*

*Rhod. & leg.  
quum proponas  
C. de Naut.  
fanor.*

*Leg. Oleron. 24.  
Per Leg. quant.  
de Pub.*

*\* Coke lib. En-  
tries, fo. 3.*

*\* Pasch. 26 Car.  
rul'd at Guild-  
Hall before  
L. C. J. Hale,  
intr  
and Peacock.*

*18 Eliz. cap. 9.  
14 Car. 2.  
cap. 11.*

*Digest. l. cum  
in debito ff. de  
Probat.*

Nor must he refuse the payment of the just and Ordinary Duties and Port-charges, Customes and Imposts, to the hazard of any part of his Lading; yet if he offers that which is just and pertaines to pay, then he is excused.

X. He must not set Sail with insufficient Rigging or Tackle, or with other or fewer Cables then is usual and requisite, respect being had to the burthen of the Vessel: And if any damage happens by the delivery of the goods into the Lighter, as that the Ropes break and the like, there he must answer; but if the Lighter comes to the Wharf or Key, and then in taking up the goods, the Rope breaks, the Master is excused, and the Wharfinger is liable. \*

If fine goods or the like are put into a close Lighter and to be conveyed from the Ship to the Key, it is usual there the Master sends a Competent number of his Marriners to look to the Merchandize, if then any of the goods are lost or imbezled, the Master is responsible \* and not the Wharfinger; but if such goods are to be sent aboard a Ship, there the Wharfinger at his peril must take care the same be preserved.

XI. After his arrival at Port, he ought to see that the Ship be well moored and anchored, and after reladed not to depart or set Sail till he hath been cleared; for if any damage happens by reason of any fault or negligence in him or his Marriners, whereby the Merchant or the Lading receives any damage, he must answer the same.

XII. And as the Law ascribes these things and many more to him as faults, when committed by him or his Marriners, in Ports, so there are other things which the Law looks upon to be as faults in him in his Voyage, when done.

As if he deviates in his course without just cause, or steers a dangerous and unusual way, when he may have a more secure passage: Though to avoid illegal impositions, he may somewhat change his course; nor may he sail by places infested with Pyrates, Enemies, or other places notoriously known to be unsafe, nor engage his Vessel among  
Rocks

Rocks or remarkable Sands, being thereto not necessitated by violence of Wind and Weather, or deluded by false lights. *Li. 1. cod. de Navibus non excusand.*

XIII. By the maritime Law, he that will charge a Master with a fault as in relation to his Duty, must not think that a generall charge is sufficient in Law, but he ought to assigne and specify the very fault wherewith he is so charged.

So, he that will infer, that such or such a sad disaster to have happned or been occasioned by reason of some fault in the Marriners, must not only prove the fault it self, but must also prove that that fault did dispose to such a sad event, or that such a misfortune could not have happened without such a fault precedent.

XIV. When Voyages are undertaken, the Master is there placed in by the Owners, and they ought to make good the Masters fact and deed; \* And therefore as the whole Care and Charge of Ship and Goods are committed to the Master, it is the prudence of the Owners to be careful who they will admit Commander of their Ship, since their actions subject them to answer the damage, or what ever other act he shall do in reference to his Imploy: And therefore he can freight out the Vessel, take in Goods and Passengers, mend and furnish the Ship, and to that effect if need be in a strange Countrey he may borrow Money with advice of his Marriners, upon some of the Tackle, or sell some of the Merchandize. If part of the Goods shall be sold in such necessity, the highest price that the remainder are sold for must be answered and paid to the Merchant; after which the Merchant must pay for the Freight of those Goods as well as for the remainder, *Leg. Oleron 1.* But if the Ship in the Voyage happens to be cast away, then onely shall be tendred the price that the Goods were bought for.

*\*Recepte salvandi fore, utrum si in navim, res missæ ei assignate sint, an et si non sint è assignate, hoc tamen ipso quod in navim missæ, sint receptæ videntur et omnium recipit custodiam quæ in navim illote sunt et factum non solum nautarum præstare debet sed et rectorum. F. Nauta Camp. stab. leg. 1. Sect. recepit.*

By the Common Law the Master of a Ship could not impawn the Ship or Goods for no property either general or special, nor such power is given unto him by the constituting of him a Master.

Yet the Common Law hath held the Law of *Oleron* reason-

*Leg. Oleron.*

*Cap. 22.*

*Bridgeman's*

*Case, Hobart,*

*fo. 10, 11.*

reasonable, That if a Ship be at Sea and takes leake, or otherwise want Victual or other Necessaries, whereby either her self be in danger or the Voyage defeated, that in such case of necessity the Master may impawn for Money or other things to relieve such Extremities by employing the money to that end; and therefore he being the person trusted with the Ship and Voyage, may therefore reasonably be thought to have that power given to him implicitly, rather than to see the whole lost.

But a Master for any debt of his own cannot impawn or Hypothecate the Ship, &c. for the same is no wayes lyable but in cases of necessity for the relief and completing of the Voyage.

Nor can he sell or dispose of the same without an authority or Licence from the Owners; and when he does Impawn or Hypothecate the Vessel or Furniture, he ought to have the consent and advice of his Mariners.

*\*Leg. Oleron*

*Cap. 1. 12.*

XV. And where the Ship is well engaged, she is for ever obliged, and the Owners are concluded thereby, till Redemption.

But in regard Masters might not be tempted to engage the Owners, or infetter them with such sort of Obligations; but where there is very apparent cause and necessity, They seldome suffer any to go Skipper or Master, but he that has a share or part in her; so that if Moneys or provisions be taken up, he must bear his equal share and proportion with the rest.

*Judgment Oleron. Cap. 22.*

The Master cannot on every case of necessity impawn the Vessel or Furniture; for if she be Freightied, and he and the Owners are to joyn in the laying in of the provisions for the Voyage, and parhaps he wants money, (a great sign of necessity) yet can he not impawn the Vessel or Furniture, any other or further then for his own part or share in her, the which he may transfer and grant as a man may do an 8th or 5th part in Lands or Houses: But such obligation of the Vessel must be in forreign parts or places where the calamity or necessity is universal on the Vessel.

XVI. If the Vessel happens afterwards to be wreckt or

or cast away, and the Marriners by their great pains and care recover some of the ruines and lading, the Master in that case may pledge the same, the produce of which he may distribute amongst his distressed Marriners in order to the carrying them home to their own Countrey; But if the Marriners no wayes contributed to the Salvage, then their reward is sunk and lost with the Vessel.

*Judgement,  
Oleron. Cap. 3.*

But if there be any considerable part of the lading preserved, he ought not to dismiss his Marriners, till advice from the Laders or Freighters; for otherwise perchance he may be made lyable.

If Merchants Freight a Vessel at their own charges, and set her to Sea, and then happens afterwards to be Weather-bound, the Master may impawn either Ship or Lading at his pleasure, or at least such as he could conveniently raise moneys on, rather then see the whole Voyage lost. And if he cannot pawn the Lading, he may sell the same, that is, so much as is necessary; in all which cases his act obliges.

*Leg. Oleron  
cap. 22.*

However, Orders and Instructions are as carefully to be look'd upon and followed as the Magnate.

XVII. He is not to Import into, or Export out of any the *English* Plantations in *Asia*, *Affrica*, or *America*, but in *English* or *Irish* Vessels, or of the Vessels built and belonging to that Country, Island, Plantation or Territory. The Master and 3 fourths of the Marriners to be *English*, upon forfeiture of Ship and Goods. And if otherwise, they are to be look't upon as Prize, and may be seized by any of the Kings Officers and Commanders, and to be divided as Prizes, according to the Orders and Rules of the Sea.

The like provision on the like penalty is for Goods of *Muscovy*, and of the Dominions and Territories of the Great *Czar* or Emperour. So likewise of Currants belonging to the *Othoman* Territories or Dominions.

All Goods of the Growth of his Majesties Plantations are not to be imported into *England*, *Ireland*, or *Wales*, Islands of *Jersey* or *Guernsey*, but in such Vessels as truly belong to Owners that are of *England*, *Ireland*, *Wales*, *Jersey* or *Guernsey*, and three fourths at least of the Marriners are to be *English*, upon forfeiture of Ship and Goods.

*Note*, In cases of sickness, Death, Captivity, Salves the Clause as to Marriners.

The Goods and Wares of those Plantations, and brought in such manner as aforesaid, must be brought from those very Countries of their severall productions and growths,

or



or from the Ports where they are usually shipped out ; on forfeiture of Ship and Goods.

That is, those  
that do not  
belong to  
*English, Irish,  
welsh, or those  
of Jersey or  
Guernsey.*

XVIII. No Ship to go from Port to Port in *England, Ireland, Wales, Jersey, or Guernsey, or Berwick*, unless the Owners are Denizens or Naturalized, and the Master and 3 fourths to be *English*.

All Owners must swear that their Vessels or Ships are their own proper Ships and Vessels, and that no Foreigner has any share or part in her, and must enter the same, and that she was bought for a valuable consideration, *Bona fide*.

Nor to bring in any goods from any place, but what are of the growth of that very Country, or those places which usually are for the first Shipping, on pain of forfeiture of their Vessel and Furniture.

12 Car 2.  
cap. 18.

This does not extend, but Masters may take in goods in any part of the *Levant* or *Streights*, although they are not of the very growth of the place so that they be imported in *English* Ships 3 fourths *English* Marriners : So likewise those Ships that are for *India* in any of those Seas to the Southward and Eastward of *Cabo bona Speranza*, although the Ports are not the places of their very growth.

Any people of *England* may import (the Master and Marriners 3 fourths *English*) any goods or wares from *Spain, Portugal, Azores, Madera, or Canary Islands*. Nay in Ships that are not *English* built Bullion may be imported ; so likewise in those that are taken by way of Prize *Bona fide*.

But Sugars, Tobacco, Cottens, Ginger, Indicoes, Fustick, or any other dying Wood of the growth of his Majesties Plantations, are to be Shipped, carryed or conveyed from any of the *English* Plantations, are to be carryed to no place in the world, but are to come directly for *England, Ireland, Wales, or Barwick*, upon pain of forfeiture of Ship and goods, and the Master is to give bond with one Security in a Thousand pound if the Ship be under the burden of a 100 Tuns, and 2000 l. if above, that upon Lading he brings his Ship directly into *England, Ireland, Wales, or Berwick*, ( the danger of the Seas excepted, ) so likewise they are to do the same for the Ships that shall go from the Plantations at the Plantations  
to

to the Governour, upon forfeiture of the Ship and Goods.

XX. When the Master shall arrive at *Gravesend*, he shall not be above 3. dayes coming from thence to the place of discharge; nor is not to touch at any Key or Wharfe till he comes to *Chesters* Key, unless hindred by contrary Winds, or draught of Water, or other just impediment to be allowed by the Officers; And likewise he or his Purser are there to make Oath of the Burthen, Contents and Lading of his Ship, and of the marks, number, contents and qualities of every parcel of Goods therein laden to the best of his knowledge; also where and in what Port she took in her Lading, and what Country built, and how manned; who was Master during the Voyage, and who the Owners; And in out-Ports must come up to the place of unlading, as the condition of the Port requires, and make Entries, on pain of 100 l.

Nor is such Master to lade aboard any Goods outwards to any place whatsoever, without Entering the Ship at the Custome-House of her Captain, Master, Burthen, Guns, Ammunition, and to what place she intends, and before departure to bring in a Note under his hand of every Merchant that shall have layd aboard any Goods, together with the marks and numbers of such Goods, and be sworn as to the same, on pain of 100 l.

No Captain, Master, Purser of any of his Majesties Ships of Warr shall unlade any Goods before Entry made, on pain of 100 l.

*Note.* There is a List of all Forraign built Ships in the Exchequer, and that no Forraign Ship not built in any of his Majesties Dominions of *Asia*, *Affrica*, or *America*, after 1. Octob. 1662. and expressly named in the List, shall enjoy the Priviledges of a Ship belonging to *England* or *Ireland*, although owned and manned by *English*, except onely such as are taken by way of reprize and condemnation made in the Admiralty as lawful prize; none but *English* and *Irish* Subjects in the Plantations are to be accounted *English*.

If the Master shall have freight from Port to Port within the Realm, he ought to have Warrant for the same,  
on

on pain of forfeiture of the goods, and he is to take forth a Cockquet, and become bound to go to such Port designed for, and to return a Certificate from the chief Officers of that port where the same was designed for, and discharged within 6 months from the date of the Cockquet.

But from the *Netherlands* or *Germany* there may not be imported no sort of Wines (other then Rhenish) Spicery, Grocery, Tobacco, Pot-ashes, Pitch, Tar, Salt, Rozin, Deal-boards, hard Timber, or Olives, Oyl, in any manner of Ships whatsoever.

It might not seem impertinent that this latter part which is abridged as in reference to matters publique should be inserted, for that sometime it may happen that an honest and well meaning Master or Skipper might innocently involve and hazard the loss of his Ship by committing acts against Lawes positive and prohibitory; and though Masters and Marriners *qua tales* be not so exquisite as to know all that does belong to their duties, or at least that which the Law layes incumbent on their shoulders, yet for that most of them have some small glimmerings of the same, that such hints in matters publique as well as private may not onely be of some advantage to them, but likewise to Merchants, who alwayes upon the miscarriages of the Masters, prove the greatest sufferers, the offenders, for the most part, proving not sufficiently solvant.



## C H A P. III.

### Of Marriners, their several Offices and Immunities : And of Barratry committed by them.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. The several Maritime Officers a Shipboard, and their Charges and Duties.</p> <p>II. Of the Masters power and authority over them, as in relation to punishing or otherwise.</p> <p>III. The duty that Marriners owe to each other, and they to the Ship.</p> <p>IV. Their attendance requisite when laded; and if detriment, where to be responsible.</p> <p>V. Where Accidents befall them, where they ought to be look't after, and at whose costs.</p> <p>VI. The Marriners Oath where requisite to the discharging of the Master.</p> <p>VII. What Accidents does destroy, and what not their wages.</p> <p>VIII. Where they may joyn all in a Suit for the recovery of their wages, and where not.</p> <p>IX. Of their wages where lyable to answer damage.</p> <p>X. Where they absolutely lose their wages.</p> <p>XI. Of Money or Goods taken up by</p> | <p>a Marriner, where it shall be debt, and where a discount of his wages.</p> <p>XII. And of their becoming lyable to correction.</p> <p>XIII. Barratry in the Marriners, the reason why the Law imputes Offences in them to be answered by the Master.</p> <p>XIV. In what cases the Master shall become lyable for the actions of his Marriners.</p> <p>XV. Of Goods purloyned before they are brought a Shipboard, where the Master is bound to answer, and where not.</p> <p>XVI. Of the Antiquity of such Customs.</p> <p>XVII. Of Goods brought secretly in a Shipboard if purloyned, where the Master is not made lyable.</p> <p>XVIII. Of Caution or forewarning, where the same shall excuse the Master.</p> <p>XIX. Where the Master shall be lyable notwithstanding such Caution.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **T**He Persons Ordinary for sayling in Ships have divers Denominations; The first which is the Master, known to us and by most Nations both now and of old, and especially by the Roman Lawes, *Nauticus vicularius*, or *Magister Navis*; in English rendred Master, or *Exercitor Navis*; in the *Tutonique*, Skipper; by the Gre-

B b

cians,

*Leg. 1. & Pa-  
sim' ad leg.  
Rhod. & l. 1.  
Parag. 2.  
Naut. Caupo.*



*cians*, *Nauarchus* or *Naclerus*; by the *Italian*, *Patrono*. But this is onely to those Vessels that are Ships of Burden and of Carriage: For to Ships of Warr the principal there is commonly called Commander or Captain. The next in Order of Office to the Master, is he who directs the Ship in the Course of her Voyage, by the *French* called *Pylott*; by the *English* and *Flemming*, *Steersman*; by the *Romans*, *Gubernator*; by the *Italians*, *Nochiero Pilotto* and *Nauarchus*, as *Gerretus* writes. The third is esteemed the Master's Mate or Companion, chiefly if the Master be Steersman himself; of old by the *Grecian* and *Roman* called *Proreta*; his Charge is to command all before the Mast.

*Vid. leg. Consol.*

The Father was of *Phalagonia*, as *Egnatius Volterranus* observes, *lib. 23.*

His Successor in order is the Carpenter or Shipwright, by those two Nations of old, called *Naupagus* by the latter, by the first *Calaphates*, from the Loyns of one of that Rank sprang that great Emperour *Michael*, surnamed *Calaphates*, who denied not to own the quality of his Father among his Regal Titles. The very name *Calaphate*, the *Venetian* and *Italian* still use to this day.

The next who succeeds him in Order, is he who bears the Charge of the Ships Boat, by the *Italians* called *Brachierie*; by the *Grecians* and *Romans*, *Garabita*, from *Carabius*, which denotes the Boat of a Ship.

The Sixth in Order, especially in Ships of Burden, is the Clerk or *Purser*, by the *Italian* called *Scrivano*, whose duty is the registering and keeping the Accounts of all received in or delivered out of the Ship; for all other Goods that are not by him entred or taken into charge, if they happen to be cast over-board in storm, or are stolne or imbezled, the Master answers them not, there being no obligation on him by Law for the same; his duty is to unlade by day, not night.

*Ill Consolato & per Stat. 14 Ear. 2. Cap. 11.*

The 7th a most necessary Officer, as long as there are aboard bellies, sharp stomachs and provision, called the *Cook*.

The 8th is the Ships Boy, who keeps her continually in Harbours, called of old by the *Grecians*, *Nauphylakes*; by the *Italians*, *Guardiano*: These persons are distinct in offices and names, and are likewise distinguished in their hyres and wages; The rest of the Crew are under the common name of Marriners, by the *Romans* called

*Nautas*;

*Nautas*; But the *Tarpollians*, or those Youths or Boyes that are Apprentices obliged to the most servile duties in the Ship were of old called *Mesonantæ*. *Exdeum ad leg. 1. Naut. Cap. 101.*

**I I.** The Master hath the supream Rule a Shipboard, and by that means his power and authority is by Law much countenanced, especially in the keeping his Crew in peace so long as they eat his bread; and if a Marriner shall happen to be bruised or hurt in doing his duty and service, the Master \* is to take care that he be carefully look't after in order to the procuring his recovery; and if it be occasioned by the miscarriage of another a ship-board, he may refund the damage out of his wages, but still remembering who gave the first assault. \* Per Leg. Oleron, Chap. 6. Per Leg. 1. de exerc. ass. & l. in fin. Naut. Cap.

If it happens that the Master commands his Boat to be manned out, and it so happens that the same is out of Order, or unfit to take the Sea, the Tewes, or other accoutrements being impotent, if the Marriners happen to be drowned, the Master is to repay one whole years hyre to the Heirs of the drowned: Therefore Masters ought carefully to view and see that the Boat be fit for men to trust their lives in upon his command.

If a Marriner shall commit a fault, and the Master shall lift up the Towell 3. times before any Marriner, and he shall not submit, the Master at the next place of land may discharge him; and if he refuses to go ashore, he shall lose half his wages, and all his Goods within the Ship: If the Marriner shall submit, and the Master will not receive the same, he shall have his whole Wages: Or if the Marriner shall depart the Ship on the Master's command, and the Master happens not to take another, if any damage happens to Ship or Goods, the Master must answer. Per Leg. Oleron Cap. 14.

**I I I.** Marriners must help one another at the Sea and in Port; if they refuse, upon the Oaths of his Fellowes, he loseth his wages. None of the Crew must or ought to leave the Ship without leave of the Master when she comes to a Port, or rides at Anchor, but alwayes constantly to wait upon her till they are discharged, or have leave; at least half to be left a ship-board. Per Leg. Oleron, Cap. 13. as per Leg. Denmark.

*leg. nemo de  
Reg. jur. &  
leg. plenmq; de  
in jus voc.*

A Marriner may not carry out of the Ship above one meals meat; but drink not a drop; and when a shipboard, ought not to be there arrested for debt, but onely so much of his wages in the hands of the Master attached: yet this is doubted if it be not on a sworn debt, that is, a Judgment or Sentence, or a penalty to the King.

They ought not to depart from a Shipboard when once admitted into their full pay, (which is always when they break ground,) without licence of the Master; and before they may so do, they are to leave a sufficient number to guard the Ship and Decks.

*leg. Oleron  
Cap. 5.*

I V. If the Ship breaks ground, and is set sayl, if after she arrives at her desired Port, their full pay continues till she returns; nor may they in any wise depart from a shipboard without leave or licence of the Master; if they do, and any disaster happens, they must answer: yet at such Port if the Vessel be well moored and Anchored with two Cables, they may go without leave, yet so as they leave a sufficient number behind to guard the Decks: but then their return must be in due season; for if they make a longer stay, they must make satisfaction.

*leg. Oleron  
Cap. 7.*

V. If Marriners get drunk and wound one another, they are not to be cured at the charge of the Master or Ship; for such Accidents are not done in the service of the Ship: but if any of the Marriners be any wayes wounded, or do become ill in the Service of the Ship, they are to be provided for at the charges of the Ship; and if they be so ill as not fit to travail, they are to be left ashore, and to take care he hath all accommodations of humanity administered to him: and if the Ship is ready for a departure, she is not to stay for him; if he recover, he is to have his full wages, deducting the Masters charges which he laid out for him.

*leg. Oleron,  
Cap. 11.*

VI. In case of Storm if Goods are cast over-board for lightning the Ship, the Oaths of the Marriners who swearing that it was done for the preservation of the Vessel and the rest of the Lading, the same shall discharge the Master.

So Goods damnified at Sea, are cleared by the Oath of the

the Master and *Marriners*, by the Laws of *Olerone*.

To assault the Master a shipboard, is a Crime that sub- *Leg. Oleron,*  
jects the Marriner's hand to be cut off, unless he redeems *Cap. 13.*  
at 5. *Solz.*

VII. If a Ship happens to be seized on for Debt or  
otherwise to become forfeited, the *Marriners* must re- *Consolat. del*  
ceive their wages, unless in some cases where the wages *Mare.*  
is forfeited as well as the Ship; As if they have Letters *Trin. 7 Jac.*  
of Mart, and instead of that they commit Piracy, by *E. R. Abr.*  
reason of which, there becomes a forfeiture of all; but *Rolls, fo. 530.*  
lading of prohibited Goods aboard a Ship, as Wooll, and  
the like, though it subjects the Vessel to a forfeiture, yet  
it disables not the *Marriner* of his wages; for the *Marriners*  
having honestly performed their parts, the Ship is tacitly  
obliged for their wages: But if the Ship perishes at Sea,  
they lose their wages, and the Owners their Freight.  
And this being the Maritime Custome, is allowed by the  
Common Law as well as the Civil Law.

VIII. The Courts at *Westminster* have been very  
favourable to *Marriners* in order to the suing for wages, \* Not but they  
for at the Common Law they cannot joyn, but must sue may, notwithstanding the  
all distinct and apart for their wages. Resolutions of

Yet in the Admiralty they may all joyn, and the Courts  
at *Westminster* will not grant a Prohibition \*: And so it  
was Rul'd, where one *Jones* a Master of a Ship was  
sentenc'd in the Admiralty for Wages at the Suit of  
Poor *Marriners*, a Prohibition being prayed upon a sug-  
gestion that the Contract was made at Land, and not  
*super altum mare*: The Court denied it, for that he *Jones versus*  
came too late, Sentence being given below against him; the Poor *Marriners*. *Winch.*  
Yet if the *Marriners* had onely Libelled, and there had Rep.  
been no Sentence, and the Defendant had prayed a Pro-  
hibition as above, yet the Court would have denied it.  
And this has been and is usually done.

But the Court will be very well informed that the  
Libel is for *Marriners* wages; for some who work Car- *Sitwell & al*  
penters work and such like labour aboard a Ship in a Owners of a  
Haven or Port within the Realm (which is *infra Corpus* Ship, *versus*  
*Comitatus*, (notwithstanding those great and ingenious *Love & al.*  
Objections against it) and must be tryed by the Com- *Mich. 27 Car.*  
mon in B. R.



mon Law, and not elsewhere,) will libel under that cloake for Marriners wages. But the Court in that case will grant a Prohibition. And so it was done in the like case.

Latch fo. 11,  
Hill. 1 Car. in  
B. R. Godfrey's  
Case.

But if a Ship rides at Anchor in the Sea, and the Master sends his Boat a shoare for Victuals or other provisions for the Ship, and accordingly the *Providore* or the Slopp-seller does bring victuals and provisions aboard; in that case if the contract be made there, it must be sued for in the Admiralty; but if the goods are by the Purser or Marriners contracted for at land, they must sue at Common Law.

I X. If Goods are so imbezled or so damnified that the Ships Crew must answer, the Owners and Master must deduct the same out of their Freight to the Merchants, and the Master out of the wages of the Marriners; for though Freight is the Mother of wages, so is it the very Father of Damage: For before the Marriner can claym his wages out of what the Ship hath earn'd, the Ship must be acquitted from the damage that the Merchant hath sustain'd, by the negligence or fault of the Marriners: And the reason is, for that as the Goods are obliged to answer the Freight, so the Freight and Ship is tacitly obliged to clear the damage; which being done, the Marriners are then let in to their wages.

Leg. Oleron.

X. If a Marriner be hyred, and he deserts the Service before the Voyage ended; by the Law *Maritime* he loses his wages: And the same Custome at Common Law pleaded, it has been conceived will barr him.

If a Marriner shall commit any wilful or negligent fault, by reason of which the Master, Owners, or the Ship answers damage to the Merchant, an Action lyes well against him.

X I. If a Marriner takes up moneys or Cloaths, and the same is entred in the Purser's Book; by the Custome *Maritime* it is a discount or a receipt of so much of their wages as the same amounts to: and in an Action brought by them for their wages, the same shall be allowed, and is

is not accounted mutual; the one to bring his Action for the cloaths, and the other for his wages.

XII. A Master of a Ship may give moderate and due Correction to his Marriners, and if they bring an Action against him, he may justifie the same at the Common Law; and by the Law of *Oleron*, if a Marriner shall assault the Master, he is to pay 5. *Solz*, or lose his hand.

*Pasch. 27 Car. in B. R. Capr. Pidgeon adject Argor.*

*Leg. Oleron, Cap. 13.*

*Marriners* after they have unladed the Ship, if they demand their wages, and there be any intention of their departure, the Master may detain a reasonable proportion of the same till they bring back the Ship, or give caution to serve out the whole Voyage.

*Per Leg. Oleron Cap. 18.*

XIII. *Barratry* of the *Marriners* is a Disease so Epidemical a shipboard, that it is very rare for a master, be his Industry never so great to prevent; a Span of Villany a shipboard soon spreads out to a Cloud, for no other cause but of that circular encouragement that one knavish Marriner gives to another.

However the Law does in such cases impute offences and faults committed by them to be negligences in the Master; and were it otherwise, the Merchant would be in a very dangerous condition.

*Justit. de ob. que ex dilect. §. Fin.*

The Reasons why they ought to be responsible, are, for that the Marriners are of his own choosing, and under his Correction and Government, and know no other Superiour a shipboard but himself; and if they are faulty, he may correct and punish them, and justifie the same by Law: and likewise if the fact is apparently proved against them, may re-imburse himself out of their wages.

*Pasch. 11 Jac. in B. R. Hernes versus Smith. Rolls Abridg. 530.*

XIV. And therefore in all cases wheresoever the Merchants loads aboard any Goods or Merchandize, if they be lost, imbezled, or any otherwise damnified, he must be responsible for them; for the very lading them aboard makes him lyable, and that as well by the Common Law, as the Law *Maritime*.

*Naut. camp. Stab. Leg. 1. Sect. 3, 6, & 7. Morse versus Slue. Pasch. 23 Car. 2. in B. R.*

XV. Nay, if his Marriners go with the Ship Boat

*Gloss. super eod.  
Sect. verb. &  
factum.*

to the Key or Wharfe to fetch Goods a Shipboard, if once they have taken charge of them, the Master becomes immediately responsible if they steal, lose, damage or imbezle them.

XVI. The antient'st Record that is found extant, is that in *Edw.* the Third's time, where one brought an Action of Trespass against the Master for the imbezlement by his Marriners of 22 pieces of Gold, Bowe, Sheaf of Arrowes, Sword, and other things; And adjudged he should answer. And for that the same is or may be of great moment, accept of a Transcript of the Record, as the same was certified into *Chancery*, in order to have it sent into the *Kings-Bench*, to enable the Plaintiff to bring an Action upon the same Judgment in any place in *England* where he could meet with the Defendant.

*Brevia Regis in  
Turri London.  
Trin. Anno  
24 E. 3. num.  
45. Bristol.*

**V**enerabili in Christo Patri Dño J. Dei gratia Wygozn Episcopo Dñi Regis Co. Cancellari vel eius locum tenenti sui humiles, & devoti Robertus Cyene, Pastor Wille Bristol, Edwardus Blanckett, & Johes de Castleacre Wallibi libertatem ejusdem Wille, salutem cum Omnia reverentia & honore, De tenori & Recordi & pcessus loquelle que fuit coram nobis in Cur Domini Regis ibm sine brebi inter Henr Wille & Jurdanum Wenoze Magistrum navis voc la Giaciane de Bayone in plico transgress put p breve Dñi Regis nobis directum fuit vos inde certificatur, sub sigillis nris vobis si placet mittimus in hys scriptis. Ad placit Tols tent ibm die Martis pr post Festum Epiphaniæ Domini anno Regni Regis nunc 24. Henr Wille quer opt. se. versus Jurdanum Wenoze Magistrum navis vocat la Giaciane de Bayone de plico transgress p pl ec. & unde quer, quod secundum legem & consuetudinem de OLERON unusquisqz Magister navis tenetur respondere de quacunqz transgt p servientes suos in eadem fact, & Johes de Kule & Wardolet de Woznes Servientes pdicti Jurdani Magisteri navis pdicte die Percut pr ante Festum Omnium Sanctorum Anno Regni pdicti Regis Co. 23. in Pari juxta Britan: in eadem navi de Johanne de Cornub servient

servient p̄dict Hen̄ 22. lib̄ in auro arcus Sagit̄ glab.  
 & al̄ bona & catalla ad valen̄ 40 l. ceperunt & asportas-  
 verunt injuste &c. ad dampnum p̄dict Hen̄ 60 l. & si  
 p̄dictus Iurdanus hoc velit dedicere p̄dict Hen̄ para-  
 tus est verificare &c. Et p̄dictus Iurdanus venit & di-  
 cit qđ lex de Oleron talis est qđ si aliqua bona & ca-  
 talla Magistro alicujus navis liberata sunt custodiens,  
 unde idem Magister p̄ eisdem vel p̄ aliqua alia re in  
 eadem navi facta manucap̄ illo modo Maḡ navis te-  
 netur respondere, non alio modo. Et sup̄ hoc petit  
 Iudicium. Et p̄dict Hen̄ dicit qđ unusquisq; Magister  
 navis tenetur respondere de quacunq; transgressione p̄-  
 servientes suos in navi sua facta, & petit Iudicium siml̄.  
 Et sup̄ hoc p̄dictes p̄tes habent diem hic die Sabati pr̄  
 post Festum s̄ci Willart̄ pr̄ futurū ad audiendū iudicium  
 suum &c. Ad quem diem p̄dictes p̄tes venerunt & pe-  
 tierunt Iudicium suum &c. Et recitat. Recordo & pro-  
 cessu p̄dictis in plena Curia Coram Majoze & Balli-  
 vis & alijs probis hominibus Tille & Magistris & Ma-  
 rinarijs, visum fuit Curie, quod unusquisq; Magister  
 navis tenetur respondere de quacunq; transgressione p̄-  
 servientes suos in navi sua facta, Ideo consideratum  
 est, quod p̄dict Hen̄ recuperet dampna sua 40 l. Et sup̄  
 p̄dict Iurdanum p̄ Cur̄ taxat & nichilominus idem  
 Iurdanus transgressione p̄dicta in m̄ia.

The Judgment  
 in this case is  
 according to  
 Law, & ought  
 not to have  
 been a Capia-  
 tur. Vide 2 Cro. 224.

tur; for it is not such a Trespass as the King is entitled to a Fine. *Beadle versus Morris*, 7 Jac. Co. Entries the same, 347.

XVII. The Master subject to answer damage, is  
 to be understood in all such cases where the Lading was  
 brought aboard either by his consent or his Purser; for  
 any other, or such as shall be secretly brought in not be-  
 ing entred in the Purser's Book, or in the Bills of Lading,  
 the Master is not obliged to see forth-coming, unless it  
 be such Goods as the parties bring into the Ship about  
 them, as cloaths, money and the like, as above, those  
 things being seldome entred, yet most commonly are  
 visible, the Master by Law is responsible for.

Leg. 1. in fin.  
 Naut. Camp. per  
 leg. itaque de  
 furtis.

XVIII. So



*Eod. Leg. in fin.  
Nant. Caup. &  
per Leg. itaq;  
de eod. edict.*

*Bartol. & Ja-  
son in leg. non  
solum S. mortem.  
de non. oper.*

*Brand versus  
Glasses, Sir  
Francis Moore  
Trin. 25 Eliz.  
in the Exche-  
quer.*

*Vide the same  
Book, Mich.  
7 Eliz. post.  
Werley's case.*

XVIII. So likewise if a Master forewarn a Passenger to keep his Goods, and that he will no wayes take care of them, and if they be lost or purloyned by the Crew, he will not be obliged to see them forth-coming; The Master is not there held responsible in case of a loss, especially if there be any thing of an agreement thereunto.

XIX. But if Goods shall be sent aboard a Ship, and the Master shall appoint a Cabin for the same, and deliver the Key to the Lader and tell him he will not be responsible if a loss happens; yet if the Goods are stole, he must notwithstanding make satisfaction: By the Common Law it shall bind an Inn-keeper.

*Note,* That Goods once delivered to a Master, the Cargo is not subject to be attached in his hands, nor can any Custome whatsoever support the same; for they are in Law as it were bayled to the Ship untill the Freight and all other charges are paid\*: and very much doubted whether an Attachment can be made in London of any Goods at all lying a Shipboard in the Rives of Thames, (which though the Port of London) notwithstanding Freight\* and all other charges are paid off.

## CHAP. IV.

## Of Freight, Charter-parties, and Demorage.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. The various ways that Ships may be Freightcd at this day.</p> <p>II. The ancient way of Freight-<br/>ing.</p> <p>III. How the same is governed upon the various Contracts, and of Accidents happening to Masters or Ladcrs preventing the Voyage.</p> <p>IV. Of Ships laden and unladed before the Voyage begun; Their becoming disabled, viz. perish in the Voyage before the same is completed.</p> <p>V. Of Ships departure considered as in reference to Freight and Damage.</p> <p>VI. Of Freight arising on Trading Voyages, and lost by contingent actions, considered by the Common Law, and the Law Maritime.</p> <p>VII. Of Freight becoming due upon the various wayes of Contract, or general where none was agreed for.</p> <p>VIII. Of Faults arising from the</p> | <p>Freighters, and of the disease of the Ship, as in reference to Freight.</p> <p>IX. Of Faults of Masters arising from taking in Goods more than were contracted for; And of being forc'd into Ports in his passage.</p> <p>X. Passengers dying, the Ship's title to their Goods and Concerns.</p> <p>XI. The Ship in construction of Law, how far lyable to Freight.</p> <p>XII. Ships taken and retaken in war, whether the same destroys the Contract.</p> <p>XIII. Goods become lost without fault of the Ship, whether Freight becomes due.</p> <p>XIV. Of Freight contracted with persons deficient.</p> <p>XV. Of Ships contracted for by the month to be paid at the arrival at a Port; Ship is cast away, the Goods saved: whether the Freight ought to be paid.</p> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **I**N the Freighting of Ships respect is alwayes had to the Ship it self, or else to a certain part thereof.

Again, The Merchants either Freight her by the Month, or the Entire Voyage, or by the Tunn; for it is one thing to Freight a Ship, and another thing to take certain Tunnage to Freight.

So also it is one thing to be a Cape-Merchant, another to be an under Freightcr.

II. There

21 E. 3. Cottons  
Abridgment of  
the Parliament  
Records, fo. 63

I I. There was of old another way of Freighting, which was when the Merchant agreed with the Master for a Sum certain to convoy the Goods ensur'd against all peril; such were to be responsible if any detriment or loss happened: but that is now become obsolete.

Mut. Caupo.  
stab. &c. Leg. 1.  
S. quancunq;  
vim.  
Si quis navem  
conduxerit in-  
strumenat con-  
signata sunt,  
Pekius Com.  
ad leg. Rhod.  
Art. 20.

Per Leg. Naval.  
Rhod. Artic.  
19.

Mich. 10 Car.  
in B.R. Lang-  
don and Stocks  
case. 1 Cro.  
fo. 279.  
Per Leg. item.  
§. Si in leg.  
loca.

I I I. Freight is governed generally by the contract, and varies according to the agreement, reduced generally into a Writing commonly called a *Charter-party*, executed between the Owners and Merchant, or the Master in the behalf of himself and Owners, or himself and the Merchant, or between them all.

The Master or Owners generally Covenant to provide a *Pylott* and all other Officers and Marriners, and all other things necessary for the Voyage; and for the taking in and delivering out of the Lading.

If there be an agreement and *earnest*, but no writing, if the same be broke off by the Merchant, he loseth his *earnest*; but if the Owners or Master repent, they lose double the *earnest*.

But by the *Common Law of England* the party damnified may bring his Action of the Case and recover his damages on the agreement.

If a time is appointed by the *Charterparty*, and either the Ship is not ready to take in, or the Merchant not ready to lade aboard, the parties are at liberty, and the party damnified hath his remedy against the other by Action, to recompence the detriment.

If part of the Lading be a Shipboard, and it happens some misfortune may overtake the Merchant that he hath not his full Lading aboard at the time, the Master is at liberty to contract with another, and shall have Freight by way of damage for the time that those Goods were aboard after the time limited; for such agreements are of a *Conditional nature precedent*, a failer as to a compleat Lading will determine the same, unless afterwards affirm'd by consent. And though it be no prudence for every Merchant or every Master to depart from the Contract if it should so fall out that the Agreement as to the Lading is not performed according to the *Charter-party* or Agreement, (seldome ever done if any part be aboard)

aboard) yet it is the highest Justice, that Ships and Masters should not be infettered but free; for otherwise by the bare lading of a *Cask* or *Bale*, they might be defeated of the opportunity of *Passage* or *Season* of the year.

So on the other hand, if the Vessel is not ready, the Merchant may ship aboard in another Vessel the remainder of his Goods, and discharge the first Skipper, and recover damages against the Master or Owners for the rest: And this is grounded upon the like reason as the former.

And therefore by the *Law Maritime*, chance or some other notorious necessity will excuse the Master; but then he loseth his Freight till such time as he breaks ground: And till then he sustains the loss of the Ship.

But if the fault be in the Merchant, he then must answer the Master and the Ships damage, or else be lyable to entertain the Ships Crew ten dayes at his own Charge; but after that, then the full Freight: and if any damage happens afterwards, the Merchant must run the risque of that, and not the Master or Owners. But by the Common Law, so long as the master hath the Goods a shipboard he must see them forth-coming.

IV. If Goods are fully laded aboard, and the Ship hath broke ground, the Merchant on consideration afterwards resolves not on the adventure, but will unlade again; by the *Law Maritime* the Freight seems deserved.

But if the Ship in her Voyage becomes unable without the Masters fault, or that the Master or Ship be Arrested by some Prince or State in her Voyage, the Master may either mend his Ship, or Freight another.

But if the Merchant will not agree to the same, then the Freight becomes due for so much as the Ship hath earned: For otherwise the Master is lyable for all damage that shall happen. And therefore if that Ship to which the Goods were translated perish, the Master shall answer; but if both the Ships perish, then is he discharged.

But

Mich. 10 Car.  
in B.R. Lang-  
don and Stocky  
case, Cro. 1.  
part, 279.

Per Leg. si 12  
conduco &  
leg. si item  
fundus & leg.  
hac distinctio.

Per Leg. Oleron.  
Cap. 21.

Artic. 25. Le-  
gum Navalium,  
Art. 29. 10d.

Rich versus  
Kneeland,  
Cro. 2. part.

Ad Leg. Rhod.

Judg. Oleron.  
Leg. ult. ad  
ad Rhod.

Digest. Paulus,  
l. 14. 2. §. 10.



But if there be extream necessity, as that the Ship is in a sinking condition, and an empty ship is passing by or at hand, he may translade the Goods; and if that Ship sink or perishes, he is there excused: but then it must be apparent that that Ship seem'd *probable* and *sufficient*.

*Lig. qui Roma*  
*S. Callimachus,*  
*ff. de verb.*  
*obl.*

V. If a set time be fixed and agreed upon between the Merchant and the Master wherein to begin and finish his Voyage, it may not be altered by the *supra* Cargo without special Commission for that purpose.

If a Master shall weigh Anchor and stand out to his Voyage after the time covenanted or agreed on for his departure, if any damage happens at Sea after that time, he shall refund and make good all such misfortune.

*Ang. Alex. &*  
*Jeson in dist.*  
*S. Callimachus.*

If it is agreed that the Master shall sayl from London to Leighorne in two moneths, and Freight accordingly is agreed on, if he begins the Voyage within the two months, though he does not arrive at Leighorne within the time, yet the Freight is become due.

*Lig. Relagati*  
*ff. de penis &*  
*Lig. ult. ff. de*  
*sep. vie.*

VI. If a Ship is Freightd from one Port to another Port, and thence to a third, fourth, and so home to the Port from whence she first sayled, (commonly called a *Trading Voyage*) this is all but one and the same Voyage, so as it be in conformity to the *Charterparty*.

*Trin. & Jac. in*  
*C. B. Rott.*  
*638. Bright*  
*versus Cooper,*  
*Brownlow I.*  
*part.*

A Merchant agrees with a Master, That if he carries his Goods to such a Port, he will then pay him such a Sum; in the Voyage the Ship is assaulted, entred and robb'd by Pyrats, and part of her Lading taken forth, and afterward the remainder is brought to the Port of discharge, yet the sum agreed upon is not become due; for the Agreement is not by the Master performed.

But by the Civil Law this is *vis major*, or *casus fortuitus*, there being no default in the Master or his Mariners, and the same is a danger or peril of the Sea, which if not in Navall Agreements exprest, yet is naturally implied: For most certain had those goods which

which the Pyrats carried away in stress of weather, *Naviganda causa*, been thrown over-board, the same would not have made a disability as to the Receipt of the sum agreed on; for by both the Common Law, and the Law *Maritime*, the act of God, or that of an Enemy shall no wayes work a wrong in actions private.

Co. 1. part, 97.  
Shelley's case.  
Reniger and  
Fogassas case.  
Plowden Com.  
But a Pyrat is  
not an Enemy;  
Vide Chap.  
Piracy.

VII. If a Ship be Freight by the Tun, and she is full laded according to the *Charterparty*, the Freight is to be paid for the whole; otherwise but for so many Tun as the Lading amounted to.

Leg. Si quis  
Cod. de Justit.  
& substit.

If Freight be contracted for the Lading of certain Cattle or the like from *Dublin* to *West-Chester*, if some of them happen to dye before the Ships arrival at *West-Chester*; the whole Freight is become due as well for the dead as the living.

But if the Freight be contracted for the Transporting them, if death happens, there arises due no more Freight then onely for such as are living at the Ships arrival at her Port of discharge, and not for the dead.

Arg. Leg. Scio  
ff. de annis le-  
gatis & leg.  
illis libertis in  
fin. ff. de con-  
dit. & demon.  
Arg. 7.

If the Cattle or Slaves are sent aboard, and no agreement is made either for lading or transporting them, but generally, then Freight shall be paid as well for the dead as the living.

Leg. qui ope-  
ras & leg. fi-  
ades §. cum  
quidam & §.  
fin. ff. locati.  
Leg. sed & ad-  
dis in §. Si  
quis mulierem ff.  
locat.

If Freight be contracted for the transporting of Women, and they happen in the Voyage to be delivered of Children on Ship-board, no Freight becomes due for the Infants.

The *Charterparty* does settle the Agreement, and the Bills of Lading the contents of the Cargo, and binds the Master to deliver them well conditioned at the place of discharge according to the contents of the *Charterparty* or Agreement; and for performance, the Master obliges himself, Ship, Tackle and Furniture to see the same done and performed.

There are 3.  
Bills of Lading  
always made,  
the one to be  
sent over Sea  
to him to  
whom the  
Goods are  
consigned to,  
the other for  
the Master, and  
the last for the  
Merchant or  
Lader.

If Goods are sent aboard generally, the Freight must be according to Freight for the like accustomed Voyages.

If a Ship shall be Freight and named to be of such a Burden, and being Freight by the Tun shall be found less, there shall no more be paid than onely by the

the Tun for all such Goods as were laded aboard.

If a Ship be Freightcd for two hundred Tuns or thereabouts, the addition of *thereabouts*, is commonly reduced to be within 5. Tun more or less, as the moiety of the number *Ten*, whereof the whole number is compounded.

If a Ship be Freightcd by the great, and the burden of it is not exprest, yet the sum certain is to be paid.

*Leg. penult. §.  
novem F. de lo-  
cat.*

VIII. If the Ship by reason of any fault arising from the Freightcr, as lading aboard prohibited or unlawful Commodities, occasions a detention, or otherwise impedes the Ships Voyage, he shall answer the Freight contracted and agreed for.

*Trin. 9 Jac.  
B.R. Bright  
versus Cowper,  
Brownlow, 1.  
part.*

If a Ship be Freightcd *out and in*, there arises due for Freight nothing till the whole Voyage be performed. So that if the Ship dye or is cast away coming home, the Freight outwards as well as inwards becomes lost.

*Leg. Oleroon.  
Leg. Naval.  
Rhod. Art. 25.*

IX. If a Master Freights out his Ship, and afterwards secretly takes in other Goods unknown to the first Laders, by the Law *Maritime* he loses his Freight; and if it should so fall out that any of the Freighters Goods should for safety of the Ship be cast over-board, the rest shall not become subject to the Averidge, but the Master must make good that out of his own purse: But if the Goods are brought into the Ship secretly against his knowledge, it is otherwise; and Goods so brought in, the same may be subjected to what Freight the Master thinks fitting. *Consol. del Mere.*

*Leg. Oleron.*

If the Ship puts in to any other Port then what she was Freightcd to, the Master shall answer damage to the Merchant; but if forc'd in by storm, or by Enemy, or Pyrats, he then must sayl to the Port conditioned at his own costs.

Generally the touching at several Ports by agreement, imports not a diversity, but a Voyage entire.

X. If Passengers having Goods happen to *decease* a Ship-board, the Master is to *inventory* their concerns, and the same may a year keep; and if none claym the same,

same, the Master becomes Proprietor defeazable: but the Bedding and Furniture of the parties become the Master and his Mates, and the clothing are to be brought to the ~~Ship~~ <sup>Post head</sup>, and there praised and distributed amongst the Crew, as a reward for their care of seeing the body put into the Sea. *Leg. Consolat. del Mar.*

X I. The Lading of the Ship in construction of Law is tacitly obliged for the Freight, the same being in point of payment preferred before any other Debts to which the Goods so laden are lyable, though such Debts as to time were *precedent* to the Freight; for the Goods remain as it were *bailed* for the same: nor can they be *Attached* in the Masters hands (though vulgarly is conceived otherwise.) *Bald. in leg. certi juris in 4. Q. in verb. Quid ergo Cod. locat.*

Ships deserve *wages* like unto a Labourer, and therefore in the eye of the Law the actions touching the same are generally construed favourably for the Ship and her Owners: And therefore if 4. part Owners of 5. shall make up their Accounts with the Freighters and receive their proportions, yet the fifth man may sue singly by himself without joyning with the rest; and this as well by the *Common Law*, as the *Law Maritime*. *Hill. 26, 27 Car. 2. in B. R. Stanley versus Ayles.*

X II. A Ship in her Voyage happens to be taken by an Enemy, afterwards in Battle is retaken by another Ship in Amity, and restitution is made, and she proceeds on in her Voyage, the Contract is not determined; though the taking by the Enemy divested the property out of the Owners, yet by the Law of Warr that possession was defeazable, and being recovered in Battel afterward, the Owners became re-invested: so the Contract by fiction of Law became as if she never had been taken, and so the entire Freight becomes due. *7 R. 2. Statham Abridg. 54. In Jure Postliminij leg. retor. & leg. in bello §. 1.*

X III. If Freight be taken for 100 Tuns of Wine, and 20 of them leak out, so that there is not above 8. inches from the Buge upwards, yet the Freight becomes due: One reason is, because from that gage the King becomes entitled to Custome; but if they be under 8. inches, by some it is conceived to be then in the Election of the Freighters to sling them up to the Master for Freight. *Boyce versus Cole sen' & Cole jun', Hill 26, 27 Car. 2. in B. R.*



Freight, and the Merchant is discharged. But most conceive otherwise, for if all had leaked out, (if there was no fault in the Master) there is no reason the Ship should lose her Freight; for the Freight arises from the Tunnage taken, and if the leakage were occasioned through storm, the same perhaps may come into an Averidge; Besides, In *Burdaux* the Master stowes not the Goods, but the particular Officers appointed for that purpose, *quod Nota*. Perhaps a special convention may alter the case.

When such a misfortune happens, the Ensured commonly transfer those Goods over to the Assurers who take them towards satisfaction of what they pay by vertue of their subscriptions.

Most certain, if a Ship Freight by the great be cast away, the Freight vanishes; but if by the Tun or Pieces of Commodity, and she happens to be cast away, afterwards part is saved; doubted whether *pro rata* she ought not to be answered her Freight.

Co. 4. Inst.  
146.

*Johannes Locinus lib. 3.  
Cap. 8.*

XIV. If a Merchant takes Freight by contracting with a Marriner that is not a Master, he must be contented to sit down without any remedy against the Owners; but perhaps such a Marriner for such act may subject himself to an action.

But if there be a fault committed by a Marriner which was hired or put in by the Master or Owners, there for reparation the Owners become lyable.

XV. The Master is not bound to answer Freight to the Owners for passengers if they are found to be unable to pay.

If a Ship by *Charterparty* reciting to be of the Burden of 200 Tuns is taken to Freight for a sum certain, to be paid at her return; the sum certain is to be paid though the Ship amounts not to that Burden.

If a Ship is Freight after the rate of 20 l. for every moneth that she shall be out, to be paid after arrival at the *Port of London*; the Ship is cast away coming up from the *Downs*, but the Lading is all preserved; yet the Freight is become due: for the money arises due monthly by the Contract, and the place mentioned is onely to shew where payment is to be made, for the Ship deserves wages like a Marriner who serveth by the month; and though he dyes in the Voyage, yet his Executors

cutors are to be answered *pro rata*: Besides, the Freight becomes due by intendment on the delivery or bringing up of the Commodities to the Port of *London*, and not of the Ship.

If the Master enters into a *Charterparty* for himself and Owners, the Master in that case may release the Freighters without advising with the Owners; but if the Owners let out to the Freighters such a Ship whereof *J.S.* is Master, though the Master Covenant in the same *Charterparty* and subscribes, yet his Release in that case will not bind the Owners, but the Owners release on the other hand will conclude the Master; And the reason is, for that the Master is not made a proper party to the Indenture. And so it was Rul'd, where an Indenture of *Charterparty* was made between *Scudamore* and other Owners of the good Ship called the *B.* whereof *Robert Pitman* was Master on the one party, and *Vandenstene* on the other party; In which Indenture the Plaintiff did Covenant with the said *Vandenstene* and *Robert Pitman*, and bound themselves to the Plaintiff and *Robert Pitman* for performance of Covenants in 600 l. and the Conclusion of the Indenture was, — *In witness whereof* the

said *Robert Pitman* put his hand and seal, and delivered the same; in an Action of Debt brought upon the Bond for performance of Covenants, the Defendant pleaded the Release of *Pitman*; whereupon the Plaintiff demurred: And it was adjudged, That the Release of *Pitman* did not barr the Plaintiff, because he was no party to the Indenture. And the diversity in that case was taken and agreed between an Indenture reciprocal between parties on the one side, and parties on the other side, as that was; for there no Bond, Covenant or Grant can be made to or with any that is not party to the Deed, but where the Deed indented is not reciprocal, but is without a *Between, &c.* as *Omnibus Christi fidelibus, &c.* there a Bond, Covenant or Grant may be made to divers several persons.

*Scudamore & al' versus Pitman.* Trin. 29 Eliz. in B.R. cited in Co. 2. Inst. fo. 673.

## CHAP. V.

## Of Wreck.

- I. Of Goods wreckt as in relation to the alteration of the property by the Civil Law.
- II. Of the preservation of Goods Wreckt, and the punishment of those that should add misery to the condition of such persons so distressed.
- III. Of Goods Wreckt, their preservation according to the Lawes of Oleron, and of England, and of the punishment of those that shall not make restitution.
- IV. Of contribution where the Ship perishes, and the Goods are all saved, and where not.
- V. The King of Great Britain's Prerogative as in relation to Wreck and other Royalties of the Sea.
- VI. Of Flotsam, Jetsam and Lagan, where the King shall have the same, and whether by the grant of Wreck the same passes; and where a Subject may prescribe.
- VII. Of Ships Wreckt and no Creature in them, yet no Wreck; and of Ships forsaken, whether in Law accounted lost or wreckt, or neither.
- VIII. Of the Sheriffs duty as in relation to Goods wreckt; and of Owners their time of claiming their property.
- IX. Wreckt Goods not to pay Customs.
- X. Of Wreck in the Isle of Wight, not in the Admiralty without special words.

*l. ne quid ff. de incendio ruina & naufragio.*

*leg. 44. D. de adq. ver. dom.*

**I**N matters of *Wreck* there is as it were a Contract between them which have lost their Goods by such misfortune, and them upon whose Lands the Goods and Merchandize are driven, that the same be restored to them, or those that claym under them. And therefore by the *Civil Law* it is precisely forbid, that no man shall meddle with such Goods as are Wreck'd; and such as are proved to have stolne any thing therout, are holden for Robbers; for that such Goods being cast on Land and recovered out of the Sea, remains still his who was the owner thereof, and descend upon his Successor; neither Escheat to the King, neither to any other to whom the King hath granted such Royal Priviledge.

The

The reason why the Laws were so strictly declared by the *Romans*, was, for by the Lawes of *Rhodes*, if any Ship had become Wreck, though all the persons were saved and alive, yet the Ship and Goods became seizable by the Lords: But the same being Barbarous, was afterward repealed and abrogated as well by those *Emperours* in their Territories, as here in *England*; the first by the Judgment of *Oleron*, which provided in such misfortune, That if the Merchant, Marriners or Merchants, or any of these escape and come safe to Land, the same was not to be accounted Wreck.

*Per le Judge-  
ment Oleron,  
Cap. 26, & 47.*

The Emperour *Constantine* the Great sayes in this case, if any Ship at any time by any Shipwreck be driven unto the shoare, or touch at any land, Let the Owner have it, and let not my Exchequer meddle with it: for what right hath my Exchequer in another mans Calamity, so that it should hunt after gain in such a woful case as this is?

*Leg. 1. lib. 11.  
C. de Naufragijs.*

And yet if no Kindred appear within a year and a day, and appearing prove not the Goods shipwrecked to be theirs, the Goods come to the Exchequer even by that Law: So much that Law condemns carelesness, which is written, *vigilantibus & non dormientibus*. And with this agrees the Laws of *Oleron*, and the Lawes of this Land, as taken out of those Imperial Laws, in that Point, as is conceived.

II. The Civil Law was ever so curious and careful of the preserving the Goods of such miserable persons, that if any should steal such, they should pay four-fold to the Owner, if pursued within a year and a day; and as much to the Prince or his Admiral: So carefully were, and so exact in requiring restitution, that the very stealing of a Naylor or the worth thereof, obliged the Thief to the restitution of all the remaining Goods. And by the Emperour *Antonius* it was made a Law for such sort of men, that they should be batten'd and banish'd for 3. years; but that was onely for those of a high and Honourable rank: but those that were base and ignoble, should be scourged and sent to the Gallies, or Metal Mines.

*Leg. 1. in pr.  
de incend. ruin.  
leg. in eum cum  
auth. seq. de  
furt.  
Leg. 3. in fin.  
de incend. ru.  
nauf.*

*Leg. pedibus  
cod.*



*Arg. leg. suc-  
curiarij de  
Extrod. crim.*

And the preventing of help to such shipwrackt persons was punisht with the same suffering as a Murderer.

The like for those that shall put forth any Treacherous Lanthorn or Light, with intention to subject them to danger or shipwrack, was punish'd with death.

*Per leg. incend.  
vūn. Naufrag.  
Leg. ne piscator.*

And though no harm happens, yet he may be punished: hence it is that Fishers are forbidden to Fish with Lights in the Night, for fear of betraying of Say-

And here I  
cannot omit

the Great and Pious Care that His Majestie hath had in his Directions about Light-Houses and Lanthorns, and other special Sea-Marks; but more especially in his Erecting at his own Princely Charge that most excellent Light-House near Goldston by Yarmouth, which both for Height, Curiosity and Form, not inferiour if not excelling all or most in Christendome.

*Per Leg. Oleron  
Cap. 47.*

But this good Law does not extend to *Pyrrats, Robbers, Sea-Rovers, Turks*, or other Enemies to the Catholique Faith.

*Westm. 1. c. 4.  
§ E. 1.  
Naufragia ad  
publicanos  
pertinento.*

Where a man, Dogg or Catt escapes alive out of the Ship, neither the Ship or other Vessel, nor any thing therein shall be adjudged *Wreck*, but the Goods shall be saved and kept by the *Sheriff, Coroners*, or the Kings Bayliffs, and delivered to the Inhabitants of the Town where the Goods are found; so that if any within a year and a day sue for those Goods, and after prove that they were his at the time of the shipwrack, they shall be restored to him without delay: but if not, they shall be seized by the said Sheriff, Coroners or Bayliffs for the Kings use, and shall be delivered to the Inhabitants of the Town, who shall answer before the Justices for the Wreck belonging to the King.

Where the *Wreck* belongs to another he shall have it in like manner, and if any be attainted to have done otherwise, he shall suffer Imprisonment, make Fine to the King, and yield damage also.

If a Bayliff do it, and it be disallowed by his Lord, the Bayliff shall answer for it if he have wherewithall; but if not, the Lord shall deliver his Bayliff's Body to the King.

The

The Lawes of Normandy agrees with this Law.

Custm. Norm.  
Cap. 17.

IV. If the Ship perishes onely, and the Goods are safe, in that case the Goods ought to pay a proportion of a 5th or 10th penny, according to the easie or difficult winning or saving of the said Goods; Rich Goods, as Gold and Silver, and Silk, pay less than Goods of great weight and cumber, being in less danger, unless it were a Wreck going into a Port, for which the Skipper was not bound for, there *è contra*, then the Skipper is not to be considered.

37 Leg. Naval.  
Rhod. & 40.

V. The King shall have Wreck of the Sea Whales, and great Sturgeons taken in the Sea and elsewhere throughout the whole Realm, except in places privileged by the King.

VI. By the grant of Wreck will pass *Flotsam*, *Jetsam*, and *Lagan*, when they are cast upon the land; but if they are not cast upon the land, the Admiral hath Jurisdiction and not the Common Law, and they cannot be said Wreck.

Sir Henry Con-  
stables case,  
Coke 5. part,  
fo. 107.

*Wreccum Maris*, are such Goods onely as are cast and left upon the land by the Sea.

*Flotsam*, is when a Ship is sunk or otherwise perished, and the Goods float upon the Sea.

Faber & alij  
inst. de ver.  
divis. Sect.  
pen.

*Jetsam*, is when the Ship is in danger to be sunk, and for lightning the Ship, the Goods are cast into the Sea, notwithstanding which the Ship perisheth.

*Lagan vel Ligan*, is when the Goods which are so cast into the Sea before the Ship perishes, being heavy, are by the prudence of the Master or Marriners, who have an intent to save them so sunk; as that they may come at them again, in order to which they fasten a Buoy or other light matter that may signifie to them where they lye, if providence should bring them in a Condition to retake them.

Leg. 7. D. pro] *derelicto*.

The King shall have *Flotsam*, *Jetsam* and *Lagan* when the Ship perisheth, or when the Owners of the Goods are not known; but when the Ship perisheth not, *è contra*.

46 E. 3. 15.  
F.N.B. 112.  
Anth. Omnes  
peregrini com-  
munia de suc-  
cessionibus ac.

Co. 5. part.  
107.

A man may have *Flotsam* and *Jetsam* by the Kings Grant, and may have *Flotsam* within the high and low Water-mark by prescription, as it appears by those of the West Countries who prescribe to have Wreck in the Sea, so far as they may see a *Humber* Barrel.

Co. 2. Inst. 167.

Leg. 8. D.  
ad leg. Rhod.  
de jactu.

VII. If a Ship be ready to perish, and all the men therein for safeguard of their lives leave the Ship, and after the forsaken Ship perisheth, if any of the men be saved and come to land, the Goods are not lost.

5 R. 2. Pro  
Willielmo  
Fishlake.

Co. 2. Inst. 167.

Leg. 43. S. 11.  
D. de furt.

Pl. Com. 466.

A Ship on the Sea was pursued with Enemies, the men for safeguard of their lives forsake the Ship, the Enemies take the Ship and spoyl her of her Goods and Tackle, and turn her to Sea; by stress of weather she is cast on land, where it happened her men arrived: It was Resolved by all the Judges of England, That the Ship was no Wreck, nor lost.

VIII. If Goods are cast up as Wreck, and it falls out they be *bona peritura*, the Sheriff may sell them within the year, and the sale is good; but he must account to the true Owners.

F.N.B. fo. 12.

Owners clayming the Wreck must make their proof by their marks or Cockets, by the Book of Customes, or by the Testimony of honest men; and if the Wreck belongs to the King, the party may sue out a Commission to hear and determine, and that by the Oaths of twelve men.

Or else he may bring his Action at Law, and make out his proof by *Verdict*; but such Action must be brought within the year and day.

DD. diplo. &  
de Off. Admir.  
de jactu.

Note. *Flotsam*, *Jetsam* and *Lagan*, are Goods on or in the Sea, and belong to the King, who by Charter hath granted them to the Lord Admiral.

Left unresol-  
ved in *Moore*,  
fo. 24. But  
since adjudg-  
ed Trin. 24

Car. in C. B.

IX. If Goods are wreckt on the shoare, and the Lord having power, takes them, he shall not pay Customs.

upon a Special Verdict found at St. Edmonds-Bury in Suffolk.

The Admirals of England, *ut magnus Admirallus; Angliæ, Hiberniæ, Walliæ, ac Dominiorum & Insularum earundem Villæ Calisiæ & Merchiarum ejusdem nec non Gasconiæ Aquitaniæ, classium & marium dictorum regnorum Angliæ præfectus generalis, &c.* which are the words of their Patents used at this day, do claym all Wrecks arising from any of those places, by vertue of their Grants.

The very words of the Lord Howard's Patent, in 28 Eliz. in Rott. Admir. m. 10.

X. King *Edward the Second* in the first year of his Reign, by his Charter granted the Castle of *Carisbrook*, with all the Lands and Tenements in the *Isle of Wight*, formerly belonging to *Isabella Fortibus Countess of Albemarle*, to his great Favourite *Peter de Gaveston* and *Margaret* his Wife, and the heirs of their two bodies begotten, together with sundry other Castles and Lands) and commanded *Nicholas de Bosco*, to put him into actual possession, and likewise commanded *Robert de Sanson* Keeper of the Forrest of *Parkhurst* in that Isle, to be intentent to them for the Farm he had granted him for life for the Custody thereof, which being after soon resealed into the Kings hands, he granted this Castle with all its Services, and all his Lands in that Isle to *Edward* his Son and his Heirs Kings of *England*, and afterwards for the ascertaining what did of right belong to the same Castle, an Inquisition went out, by which it was found *inter alia* qd *wreckū maris pertinens ad dictum Castrum valet p annū 4 s.*

1 E. 2. m. 6. num. 6.

Pat. 20 E. 2. m. 10. intus pro Edwardo fil. Regis.

Inquisitiones de Anno 47 H. 3. num. 32.

So that by the general Patent of the Admiral will not pass the Wreck of this Isle, without special words granted in the Patent,

*Note*, If the Wreck happened, or was occasioned by reason of any fault or negligence in the Master or Mariners, the Master must make good the loss; but if the same was occasioned by the act of God to avoid an Enemy or Pyrat, and the like, there he shall be excused.

Leg. 3. §. 1. D. Naut. Caup. St. l. 1. §. 4. D. de obl. & act. leg. 26. §. 6. D. mand.

*Quia vis major providen-*

*tiam & industriam humanam superat, nisi culpa casum præcefferit.*



## CHAP. VI.

## Of Averidges and Contributions.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of Goods and Merchandize when subject to be cast over-board.</p> <p>II. Of the Account rendred of such ejected Goods, and by whom.</p> <p>III. Of the Antient Lawes of England as in reference to such Ejections.</p> <p>IV. What Goods must come into the Averidge, and what are exempt.</p> <p>V. The Master discharged by such acts by the Common Law.</p> <p>VI. The Ships Gear or Apparel whether within the Averidge.</p> <p>VII. The residue of the Goods where tacitly obliged to answer the Averidge.</p> <p>VIII. Of Goods remaining a shipboard spoyl'd by reason of the ejecting of others, where subject to the Averidge.</p> <p>IX. Where Ship and Lading are both made liable to the Averidge.</p> | <p>X. Of misfortunes not subject to an Averidge.</p> <p>XI. Where the remainder of the Goods are exempted from the Averidge, and the damage of the ejected Goods falls on the Master.</p> <p>XII. Damage to the Ship where the Lading contributes, and the Standard rate in Contributions.</p> <p>XIII. The Master becomes a Captive for the redemption of Ship and Lading, where lyable to the Averidge, and where discharged.</p> <p>XIV. What Goods are subject to the Averidge.</p> <p>XV. Contribution for Pylotage, and where the remaining Goods not subject to Averidge.</p> <p>XVI. Rules general for settling the Averidge.</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

*Leg. Rhod. de jact.*

I. **S**Hips being Freightred and at Sea, are often subject to storms, in which by the Ancient Lawes and Customes of the Sea, in *Extream necessity* the Goods, Wares, Guns, or whatsoever else shall be thought fit, may in such *Extremity* be flung over-board; but then the Master ought to consult with his Marriners, who if they consent not, and yet the storm and danger continues, the Master may command notwithstanding, the casting overboard what he shall judge most fitting for the common safety of the rest.

If

If there be a *super Cargoe*, a request ought to be made *Leg. Oleron.* to him to begin first; but if he refuses, the Marriners *cap. 8.* may proceed.

II. If the Ship so fortunes as to out-weather the *Leg. Consolato* Storm, and in safety arrives at her Port of discharge, the *del Mare.* Master and the most of his Crew must swear that the Goods were cast over for no other cause but purely for *the Safety of the Ship and Lading.* The custome of clearing of that Point varies according to the several Countries or places they arrive at, *Leg. wisbicens. Artic. 38, 39.*

III. King William the Conquerour, and Henry the First, *Liges Guliel. I.* made and ratified, this Law concerning Goods cast over- *& H. I. c. 98.* board by Marriners in a Storm, in imitation of the An- *de pactis ad* cient *Rhodian Law*; *de jact.* *legem Rhodiam.*

*Si ego fecero res tuas de Navi ob metum mortis de* *Selden ad Ead-*  
*hoc non potes me implacitare nam licet alteri damnum* *merum & Notæ*  
*inferre ob metum mortis quando periculum evadere* *& Spici legium*  
*non potest. Et si de hoc me mesces, qd ob metum* *fo. 183.*  
*mortis nil fecisse de comespziotai. Et ea quæ in navi* *whelock de*  
*restant dividantur in communi secundum catalla, et si* *Priscis Anglo-*  
*quis fecerit Catalla extra navim quando necessitas non* *rum legibus,*  
*exigerit ea restituat.* *fo. 167.*

IV. The Ship arriving in safety, the remainder must come into the *Averidge*, not only those Goods which pay Freight, but all those that have obtained safety and preservation by such *ejection*, even Money, Jewels and Clothes, and such like, are not exempted. *Leg. 1. & 2. ad leg. Rhod. & leg. Oleron.*

But those things which are born upon a mans body, Victuals and the like put a Shipboard to be spent, are totally excluded from the Contribution.

The Master ought to be careful that onely those things of the *least value* and *greatest weight* be flung over-board. *Leg. wisbicens. Artic. 20, 21.*

V. As this Law does take care that this common Calamity should be born by all the parties interested by a general Contribution, so the *Common Law* takes notice of the misfortune, and makes provision to Indemnifie the Master; and therefore if the party Owner of such *ejected* Goods shall bring an Action against the Master

12 Jac. in B.R. Master or Owners of the Vessel, the Defendant may  
*Bulstrode* 2 part; plead the special matter, and the same shall barr the  
 290. Bird ver- Plaintiff.  
 sus *Afficot*.

*Leg. 1. ff. de  
 exercitoria  
 action.*

VI. But if the Ships Gear or Apparel be lost by Storm, the same is not within the *Averidge*, but is accounted like unto a Workman breaking or spoiling his Tools; So for Goods secretly brought into the Ship against the Master or Purfers knowledg, no Contribution is to be made, except in the avoiding of a danger, as the flinging the *Mast* overboard, or the slipping the *Tow-Anchor* or *Boat*.

*L. amissa &  
 Oleron.*

*Johannes Loc-  
 nius lib. 2.  
 cap. 7. de jactu.  
 & 8. de con-  
 tributione.*

This Order is observed generally in the rating the remainder of the Goods by way of Contribution.

If they chance to be cast over-board before half the Voyage performed, then they are to be esteemed at the price they cost; if after, then at the price as the rest or the like shall be sold at the place of discharge.

*Leg. 1. de Del  
 mal. except. &  
 leg. Si non for-  
 tem de cond. in  
 de.*

VII. As the Common Law looks upon the Goods and Cargo as a pawn or pledge for the Freight, so the Maritime Law looks upon them likewise as a security for the answering the *Averidge* and *Contribution*, and that the Master ought not to deliver the Goods till the Contribution is settled; the same being tacitly obliged for the one as well as the other. *Ad leg. Rhod. l. 2. Si non conservatis.*

*Leg. Navis 4.  
 ad leg. Rhod.  
 And Vinus  
 Commentary,  
 fo. 235.*

VIII. If through the rifling of the Ship, or the casting or unlightning the Ship, any of the remaining Goods are spoiled either with wet or otherwise, the same must come in to the Contribution for so much as they are made worse.

*Leg. 9. S. 3. ad  
 exhib.*

IX. If it falls out that a Ship entring into a Port or Channel cannot make way, and there be a lightning or disburdning of the Ship, then the Contribution falls two parts to the Lading, and one third to the Ship, except the Ship surpasse in value the Lading, or that there is some bad quality in the Ship it self.

But to prevent that ambiguous Question, if the party

ty Covenants that the Goods shall be delivered at the Port. Covenanted and appointed, then Condition makes Law. L. 1. verse. quod convenit depos.

So for the Pylotts Fee and raising of the Ship off ground when there is no fault in the Master.

X. If two Ships happen to encounter and Cross each other, and the Crew swear their Innocency, Contribution must be made by a just equality; but if one perishes, then can there be no proportion of the loss, so no Contribution. The reason that is given, for that otherwise a Skipper might of purpose set an old weak Ship against a strong Ship, and by that means hedge himself into a Contribution and recompence. However, this bars not the Owners from bringing their Action against the negligent Master, by which means he may recoupe himself in damage, if it happens at Sea, the Action by the Civil Law is called *Legis Aquilæ*. Leg. quæ ad modum parag. Si navis ad leg. Aquilæ. Eod. leg. 18 H.6. num. 52. 3. Inst. fo. 146. Goodwyn versus Tompkins, Noy Rep.

If such a misfortune happens in the Night at Sea, the party if he will compleatly arm himself for his recovery, ought to prove, that he made out Light or Fire, or otherwayes gave notice by crying or calling out.

XI. If it falls out the Ship or Vessel by the indiscreet Stowing or Lading the Ship above the Birth-mark such *ejection* happen'd, in that case it has been used by the Maritime Lawes no Contribution to be made, but Satisfaction is to be answered by the Ship, Master or Owners. Lust. Servus 27. §. & Si. 23. ad leg. Aquilæ

XII. If to avoid the danger of a Storm, the Master cuts down the Masts and Sayls, and they falling into the Sea are lost, this damage is to be made good by Ship and Lading *pro rata*: otherwise if the case happens by storm or other Casualties. Ad Reg. Rhod. leg. 2. §. Si conservatis.

No Contribution is to be paid in case one Ship strike against another whereby damage happens, but full Satisfaction is to be answered the Merchant in case of fault or miscarriage in either; or an equal division



vision of the damage, in case it happen by a *Casualty*, as above.

*F. de leg. Rhod.  
leg. Navis  
onusta. leg. Na-  
vis. ad leg.  
Rhod. de Jactu.  
Sir Francis  
Moore, fo 297.*

If a *Lighier* or *Skiff*, or the Ships Boat into which part of the Cargo is unladen for the lightning of the Ship perish, and the Ship be preserved, in that case Contribution is to be made; but if the Ship be cast away, and the Lighter, Boat or Skiff be preserved, there no Contribution or Averidge is to be had, it being a Rule, *No Contribution but where the Ship Arrives in Safety.*

*Leg. Rhod. de  
Jactu, l. 2. Si  
Navis a Pyra-  
tis.*

XIII. If a Ship happens to be taken, and the Master to redeem the Ship and Lading out of the Enemies or Pyrats hands, promises them a certain sum of money, for performance whereof himself becomes a Pledge or Captive in the Custody of the Captor; in this case he is to be redeemed at the costs and charges of the Ship and Lading, and Money if there be any in her, are contributory according to each mans interest for his ransom.

*Moore 297.  
pl' 442. Hicks  
versus Palling-  
ton.*

So where a Pyrat takes part of the Goods to spare the rest, Contribution must be paid.

But if a Pyrat takes by violence part of the Goods, the rest are not subject to Average, unless the Merchant hath made an expresse agreement to pay it after the Ship is robb'd.

*Grotius de In-  
tro. jure. Holl.  
part. 29.*

But if part of the Goods are taken by an Enemy, or by Letters of Marque and Reprizal, *è contra.*

*Suetonius. jure  
Naut. in the  
end of the  
13. Chapter.*

So likewise in storm, if the same is done for preservation of the remainder.

XIV. In Ejectment the Master or Purser of the Ship shall contribute for the preservation of the Ship, and also the Passengers for such Ware as they have in the ship, be it Pearls, Pretious Stones, and such like; and Passengers that have no Wares or Goods in the ship, yet in regard they are a burthen to the ship, Estimate is to be made of his and their Apparel, Rings and Jewels, towards a contribution of the loss; and generally all things in the ship except the Victualling and Provisions of the ship, and the bodies of men (unless  
Servants)

Servants) must bear a proportionable share in the Contribution.

The Estimate being made of the Goods lost and saved, the price is to be set down not for how much they were bought, but how much they might be sold, at the time when the Ejection was made; and if any thing be flung into the Sea and endamaged, and afterwards is recovered again, yet contribution is to be made only for the damage.

*Pictetus ad leg. Rhod. de jact. fo. 196, 197, 198.*

XV. Contribution is to be paid for the Pylot's Fee that hath brought a Ship into a Port or Haven for her safeguard, (it being not the place she was designed for) so to raise her off the ground when there is no fault in the Master.

If a Master of a Ship lets out his Ship to Freight, and then receives his compliment, and afterwards takes in Goods without leave of the Freighters; and a Storm arises at Sea, and part of the Freighters Goods are cast overboard, the remaining Goods are not subject to the Averidge, but the Master must make good the loss out of his own purse.

*Grotius Introd. jur. Holl. 3. 29. Vinus and Pictus Commentaries on the Lawes of Rhodes, 236.*

The Goods which are lost are to be valued, then the Goods saved are to be estimated, which being known, a proportionable value is to be contributed by the goods saved, towards reparation of the goods ejected, or cast overboard.

In which regard is alwayes had, not to what might be got by the Goods lost, but what the intrinsick damage is by the loss of the same; the which are not to be estimated what they might have been sold for, as what they cost or were bought for.

*Locinus lib. 2. Chap. 8, 9, 10, 11.*

But now the Custome is general, the Goods saved and lost, are estimated according as the Goods saved were sold for; Freight and other necessary charges being first deducted.

*The Custome of Places varies this Modus of Estimating; the which is done by Merchants and Marriners indifferently nominated by the Court.*

If there were Plate, Jewels or the like in a Trunk, Chest, Pack or Bale, at the time of their Ejection, if there be a *super Cargoe* he ought to give notice by discovering of the same to the Master or Marriners, otherwise he shall be answered in the Contribution no more then

vision of the damage, in case it happen by a *Casualty*, as above.

*F. de leg. Rhod.  
leg. Navis  
onusta. leg. Na-  
vis. ad leg.  
Rhod. de Jactu.  
Sir Francis  
Moore, fo. 297.*

If a *Lighter* or *Skiff*, or the Ships Boat into which part of the Cargo is unladen for the lightning of the Ship perish, and the Ship be preserved, in that case Contribution is to be made; but if the Ship be cast away, and the Lighter, Boat or Skiff be preserved, there no Contribution or Averidge is to be had, it being a Rule, *No Contribution but where the Ship Arrives in Safety.*

*Leg. Rhod. de  
Jactu, l. 2. Si  
Navis a Pyra-  
tis.*

XIII. If a Ship happens to be taken, and the Master to redeem the Ship and Lading out of the Enemies or Pyrats hands, promises them a certain sum of money, for performance whereof himself becomes a Pledge or Captive in the Custody of the Captor; in this case he is to be redeemed at the costs and charges of the Ship and Lading, and Money if there be any in her, are contributory according to each mans interest for his rancome.

*Moore 297.  
pl' 442. Hick-  
versus Pallin-  
ton.*

So where a Pyrat takes part of the Goods to spare the rest, Contribution must be paid.

But if a Pyrat takes by violence part of the Goods, the rest are not subject to Average, unless the Merchant hath made an expresse agreement to pay it after the Ship is robb'd.

*Grotius de In-  
trod. jure. Hol-  
part. 29.  
Suetonius. jure  
Naut. in the  
end of the  
13. Chapter.*

But if part of the Goods are taken by an Enemy, or by Letters of Marque and Reprizal, *à contra.*

So likewise in storm, if the same is done for preservation of the remainder.

XIV. In Ejectment the Master or Purser of the Ship shall contribute for the preservation of the Ship, and also the Passengers for such Ware as they have in the ship, be it Pearls, Pretious Stones, and such like; and Passengers that have no Wares or Goods in the ship, yet in regard they are a burthen to the ship, Estimate is to be made of his and their Apparel, Rings and Jewels, towards a contribution of the loss; and generally all things in the ship except the Victualling and Provisions of the ship, and the bodies of men (unless Servants)

Servants) must bear a proportionable share in the Contribution.

The Estimate being made of the Goods lost and saved, the price is to be set down not for how much they were bought, but how much they might be sold, at the time when the Ejectionment was made; and if any thing be flung into the Sea and endamaged, and afterwards is recovered again, yet contribution is to be made onely for the damage.

*Petkew ad leg. Rhod. de jact. fo. 196, 197, 198.*

X V. Contribution is to be paid for the Pylot's Fee that hath brought a Ship into a Port or Haven for her safeguard, (it being not the place she was designed for) so to raise her off the ground when there is no fault in the Master.

If a Master of a Ship lets out his Ship to Freight, and then receives his compliment, and afterwards takes in Goods without leave of the Freighters; and a Storm arises at Sea, and part of the Freighters Goods are cast overboard, the remaining Goods are not subject to the Averidge, but the Master must make good the loss out of his own purse.

*Grotius Introd. jur. Holl. 3. 29. Vinus and Petkew Commentaries on the Lawes of Rhodes, 236.*

The Goods which are lost are to be valued, then the Goods saved are to be estimated, which being known, a proportionable value is to be contributed by the goods saved, towards reparation of the goods ejected, or cast overboard.

In which regard is always had, not to what might be got by the Goods lost, but what the intrinsick damage is by the loss of the same; the which are not to be estimated what they might have been sold for, as what they cost or were bought for.

*Locinus lib. 2. Chap. 8, 9, 10, 11.*

But now the Custome is general, the Goods saved and lost, are estimated according as the Goods saved were sold for; Freight and other necessary charges being first deducted.

*The Custome of Places varies this Modus of Estimating; the which is done by Merchants and Marriners in-] differently nominated by the Court.*

If there were Plate, Jewels or the like in a Trunk, Chest, Pack or Bale, at the time of their Ejection, if there be a *super Cargoe* he ought to give notice by discovering of the same to the Master or Marriners, otherwise he shall be answered in the Contribution no more then



*Ad Leg. Rhod.  
S. ult. Inst. de  
rer. divis. &  
leg. 9. S. ult.  
de acq. rer.  
Dom.*

then the bare extrinſick value appeared to be; but the Affurors will hardly fare ſo well.

If Contribution ſhall be ſetled, and the Merchant will not agree, the Maſter may detain the Lading, for the ſame is as tacitly obliged to answer that as the Freight; And if at the Common Law the Merchant ſhould bring an Action, the Defendant ſhall barr him by pleading the ſpecial matter.

*ff. ibid. leg.  
Navis, S. cum  
antem.*

If Goods are caſt overboard, and afterwards are recovered; Contribution ceaſes, ſaving for ſo much as they are damaged and made worſe by reaſon of ſuch Ejectment.

*Note,* Goods caſt overboard to lighten the ſhip make no dereliſt.

*Leg. 23. D.  
de prob. leg.  
ſaluſus S. Si  
jaſtum. D. de  
furt.*

And though ſuch neceſſity ſeems to ſubject the Lading to Ejectment to prevent the ruine and deſtruction of the perſons, yet ſome Lading ſeems excepted, and therefore Canon and other Inſtruments or Proviſions conſigned to relieve a City, ought not to be flung overboard; for in ſuch caſe the Law impoſeth on every ſubject, that he prefer the urgent Service of his Prince, before the ſafety of his life.

*Bacon Max.  
fo. 17. privile-  
gium non valet  
contra rem pub-  
licam.*

## CHAP. VII.

## Of Policies of Assurance.

- I. *Assurances by whom first introduced.*
- II. *Assurances the nature of them.*
- III. *How esteemed of by Law.*
- IV. *The various ways of Ensuring, and on what.*
- V. *Assurance when esteemed most dangerous, and of fraudulent Policies.*
- VI. *Of the Receipt of Premium, and the custome of abatement on losses.*
- VII. *Policies that now ensure against all the Accidents of Heaven and Earth.*
- VIII. *A Ship Ensured generally, whether the same includes the Cargoe; and whether it is necessary in the Policy to mention the particular Goods.*
- IX. *If the Master is discharged of the damage, whether the Ensurer may be made lyable.*
- X. *A Ship Ensured from a Port, and she is burnt before her departure, whether the Assurers are made lyable.*
- XI. *Goods Ensured in one Ship, are afterwards in the Voyage put into another, the second miscarries, whether the Assurers are made lyable.*
- XII. *A man Ensures more than the value of the Cargoe, the Custome in such case.*
- XIII. *A Ship is Ensured from one Port to another, and there to be landed; the Cargoe after arrival is sold, and before landing is burnt, whether the Assurers shall be made answerable.*
- XIV. *A Ship Ensured from one Port to (blank) being in time of warr taken, whether the Assurers shall answer.*
- XV. *Of the Ensureds renouncing after a loss; and what operation the same has by Custome.*
- XVI. *Of the Office erected by the Statute of 43 Eliz. what power, of the Jurisdictions claymed by those at Common Law and the Admiralty.*
- XVII. *What power and authority was given by the Statute of 43 Eliz. to that Court.*
- XVIII. *What things it was deficient in: and holpen by the Statute of 14 Car. 2. cap. 23. and of their authority and power general at this day.*
- XIX. *Of the advantages that seem to accrew to publique Assurances, different from private ones.*

IT is conceived by Suetonius, that Claudiuſ Caesar was the first that brought in this Custome of Assurance, by which the Danger and Adventure of Voyages is divided, repaired and born by many persons, who for a certain sum by the Spaniard called *Premio*, assure Ship or

D d

Goods;

*In vita Claud.  
Caesar, lib. 24.  
c. 18.*

\* Leg. 1. ff. qui  
Salisd. cog.  
Grotius de jure  
Bell. ac Pacis,  
lib. 2. cap. 12.  
§. 3. in fin.

Goods, or both, or a proportion, according as the Pol-  
licy is.\*

I I. *Assurances* are either *publique* or *private*; *Pub-  
lique*, when they are made and entred in a certain Of-  
fice or Court, commonly called the *Office of Assurance* in  
the *Royal Exchange* in *London*; and the same are called  
*publique*, for that it is free for any man to resort and see  
what another hath assured upon his *Adventure*.

*Private* is, when an *Assurance* is made, but the *Ensured*  
keeps the same secret, not deeming it fit that any  
should see or know their *Cargoe* or *Adventure*, or what  
*Premio* they have given, or assurance they have made;  
and the same being never entred in the *Office*, is known  
by the name of a *Private Assurance*.

I I I. By the *Common Law* they are both of the same  
validity, as in reference to obtain Satisfaction from the  
*Ensurers*, if loss or damage should happen to the *Ad-  
venture*.

43 Eliz. cap.  
12.

But by the proceedings erected by *Statute* of 43 *Eliz.*  
*Cap. 12.* onely those that are entred in the *Office* of that  
*Court*, can be sued or determined there.

Leg. 4. §. D. de  
Naut. fen.

I V. *Assurances* are of various sorts, some being to  
places certain, others general; those that are made to  
places certain, are commonly upon Goods laden or to  
be laden aboard outward, and untill the same *Adven-  
ture* shall be laid ashore at such a *Port*.

Or upon Goods laden or to be laden homeward in  
such a *Ship* till the *Adventure* shall likewise be landed.

Johannes Loc-  
ninus, lib. 2.  
cap. 5. §. 56.

Or else upon Goods out and in, with liberty to touch  
at such *Ports* as are mentioned in the *Pollicy*.

So likewise on *Ships* that go *Trading Voyages*, as  
*Round* to *Cales*; and that it shall be lawful after the  
*Ships* delivery there, to take in at the same *Port* another  
*Cargoe*, and with that proceed to the *West-Indies* or  
other parts, and back again to *Cales*, and from thence  
to *London*, this *Pollicy* being general and dangerous, pro-  
cures seldome subscriptions.

Sauter. p. 3.  
num. 13. seq. 43.  
Seq.

As Goods and Merchandize are commonly *Ensured*,  
so likewise are the *Ships Tackle* and *Furniture*; but in  
regard there seldome happens a *Voyage* but somewhat

is

is missing or lost, the *Premio* commonly runs higher then for Merchandize.

Assurances may be made on Goods sent by land, so likewise on Hoves and the like.

V. Those Assurances are most dangerous when there are these words inserted *lost or not lost*; which is commonly done when a Ship hath been long missing and no tydings can be had, the *Premio* especially in time of Warr will run very high, sometimes 30 or 40 *per Cent*; and though it happens at the time that the subscription is made the ship is cast away, yet the Assurers must answer.

But if the party that caused the Assurance to be made saw the Ship wreckt, or had certain intelligence, such subscription will not oblige, the same being accounted a meer fraud.

So likewise if the Assured having a rotten Vessel shall assure upon the same more then she is worth, and afterwards give order that going out of the Port she should be sunk or wreckt; this will be fraudulent, and not oblige the Assurers to answer.

convicted by Information for the Fraud, *Term. Sancti Hillarij sequen.* in B.R. *Vide Livius, lib. 23.*

VI. Few or scarce any Ensure the whole Ship, but the Subscriptions being for Sums certain, as 50 l. or 500 l. at the *Premio* then current, which when the Adventure is born they receive; but if a loss happens, the *Premio* is deducted together with the usual abatement: so that the Ensured receive much about 80 *per Cent.* if a loss happens.

VII. The *Policyes* now adayes are so large, that almost all those curious Questions that former Ages and the Civilians according to the Law Maritime, nay and the Common Lawyers too, have controverted, are now out of debate; scarce any misfortune that can happen, or provision to be made, but the same is taken care for in the *Policyes* that are now used; for they Ensure against

If such Assurance be made in the Office, they then set down the hour when intimation is given of the loss.

*Locinius, lib. 2. cap. 5. §. 9. 9.*

10.

*Arthur Stockden of Stockden's Case, Mich. 26 Car. 2. in B. R. Afterward*

*in B. R.*

The Subscription mentions as if the *Premio* had been actually received, but it is seldom done till the adventure is borne.

*ut quæ in naves impossuissent, ab hostium tempestatisque, vi publico periculo essent. Negotia*

*toribus certa lucra proposuit suscepto in se damno, si cui quid per tempestates accidisset; Livius, lib. 23. c. 25. Vide Lælius in Commentario ad Digesta, tit. pro Socio. n. 25.*



\* Sub nomine  
periculi, de quo  
fit cautio, com-  
prehenditur  
omnis casus qui

accidit in mari, à tempestate, ab hostibus, prædonibus, Repræsalis ut, vocant arrestis  
alijsq; modis usitatis & inusitatis citra fraudem & culpam contrahentium, aut domini  
mercium vel navis. Grotius de jure Holl. part. 24.

Iocinius, lib. 2.  
cap. 5. §. 7, 9,  
10.

Heaven and Earth, Strefs of Weather, Storms, Ene-  
mies, Pyrats, Rovers, &c. or whatsoever detriment shall  
happen \* or come to the thing Ensured, &c. is provided  
for.

VIII. If a Merchant Ensures such a Ship generally,  
and in the Policy it is expressed of such a Burthen, the  
Ship happens then to be loaden and after miscarries, the  
Ensurer shall not answer for the Goods, but onely for  
the Ship.

It matters not in the Policy whether the particular  
Wares and Goods are named, but generally upon the  
principal Wares, and all other Commodities laden or  
to be laden for the Ensured or for his account, or for  
any other.

X. If a Ship be Ensured from the Port of London to  
Cales, and before the Ship breaks ground takes fire, and  
is burnt, the Assurers in such case shall not answer, for  
the Adventure begun not till the Ship was gone from  
the Port of London; but if the words had been, *at and*  
*from the Port of London*; there they would upon such a  
misfortune have been made lyable.

Note, The Port  
of London ex-  
tends from the  
North Foreland  
in the Isle of  
Thanet, over  
in a Line to  
the Naze in  
Essex, and from

thence to London-Bridge. Rotulo. Scaccarij 19 Car. 2.  
If such an Assurance had been from London to Cales,  
and the Ship had broke ground, and afterwards been  
driven by storm back to the Port of London, and there  
had took fire, the Ensurers must have answered; for the  
very breaking of ground from the Port of London was  
an inception of the Voyage.

That has been  
much doubt-  
ed; and opi-  
nions of the  
Court hath  
generally en-  
clined against  
the Assurers.  
Leg. ult. ad  
Rhod.

Digest. Paulus.  
l. 14. tit. 2. §. 10

XI. If Goods are Ensured in such a Ship, and af-  
terwards in the Voyage it happens she becomes leaky  
and crazy, and the *super Cargoe* and Master by consent  
become Freighters of another Vessel for the safe delivery  
of the Goods; and then after her relading the second  
Vessel miscarries, the Assurers are discharged: But if  
there be these words, *The Goods laden to be transported*  
*and delivered at such a place by the said Ship, or by any*  
*ether Ship or Vessel untill they be safely landed*, then the  
Ensurers must answer the misfortune.

XII. If

XII. If a man Ensures 5000 l. worth of Goods, and he hath but 2000 l. remitted, now he having ensured the real Adventure, by the Law Maritime all the Assurors must answer *pro rata*. But by the opinion of some, onely those first Subscribers who underwrit so much as the real Adventure amounted to, are to be made lyable, and the rest remitting their *Premio 10 s. per Cent.* deducted out of the same for their subscriptions, are to be discharged.

*Vide Grotius  
Introd. jur. Holl.  
212.23. And  
indeed is more  
the Custome  
of Merchants  
then Law.*

XIII. A Merchant Ensures his Goods from London to Sally, and there to be Landed; the Factor after arrival having opportunity sells the Cargo aboard the same Ship without ever unlading her, and the buyer agrees for the Freight of those Goods for the Port of Venice; before she breaks ground, the Ships takes fire, the Assured is absolutely without remedy; for the property of the Goods becoming changed, and Freight being contracted *de novo*, the same was as much as if the Goods had been landed.

*Locinius lib. 2.  
cap. 5 §. 9. And  
by the Lawes  
of Antwerp  
there is a time  
allotted after  
the Ships arri-  
val at her Port  
how long the  
adventure is  
to be born by  
the Ensurers,  
which is about  
15 dayes, Art.  
13. Afficr.  
Antwerp.*

And so it is if the Factor after her arrival had contracted for the Freight to another Port, and the Ship had happened to take fire, the Assurors are hereby absolutely discharged for ever.

XIV. If a Ship be Ensured from London to and blanch being so left of purpose by the Lader to prevent her surprize by the Enemy, in her Voyage she happens to be cast away, though there be private Instructions for her Port, yet the Ensured sit down by the loss by reason of the uncertainty.

*Case of Mon-  
sieur Gourdan.  
Governour of  
Calais. Anno  
1585.*

XV. After notice of loss, the Ensured, (if he doth think fit) for that he hath Ensured the most of his Adventure, or that he would have the assistance of the Assurors; when there is hope of Recovery of the Adventure, he may then make a Renunciation of the Lading to the Assurors, then he comes in himself in the nature of an Ensurer, for so much as shall appear he hath born the Adventure of beyond the value Ensured.

*Locinius, lib. 2.  
cap. 5. §. 8.*

But if the Merchant shall not renounce, yet there is a power given in the Policy for him to travail, pursue and endeavour a recovery (if possible) of the Adventure after a misfortune to which the Assurors are to contribute, the same being but a trouble to give ease to the Assurors.

If prohibited Goods are laden aboard, and the Merchant ensures upon the general policy, which alwayes contains these words; *Of the Seas, Men of Warr, Fire, Enemies, Pyrats, Rovers, Theeves, Jettexons, Letters of Mart, and Covenants, Arrests, Restraiment and Detainments of Kings and Princes, and of all other persons, Barratry of the Master and Marriners, and of all other perils, losses and misfortunes whatsoever they be, and howsoever they shall happen or come, to the hurt and detriment of the Goods and Merchandize, or any part and parcel thereof;* whether if such Goods be lawfully seized as prohibited goods, the Ensurers ought to answer? It is conceived they ought not; and the difference hath been taken, where Goods are lawful at the time of Lading to be imported into that Country for which they are consigned for, but by matter *ex post facto* after the lading they become unlawful, and after arrival are seized, there the Assurors must answer, by virtue of the Clause, *And all other perils, &c.* But if the Goods were at the time of lading unlawful, and the Lader knew of the same, such Assurance will not oblige the Assurors to answer the loss; for the same is not such an Assurance as the Law supports, but is a fraudulent one.

*Sub nomine periculi, de quo fit cautio, comprehenditur omnis casus qui accidit in mari, a tempestate, ab hostibus predonibus reprisalijs ut vocant arrestis alijsq; modis usitatis citra fraudem, & culpam contrahentium aut domini mercium vel navis. Gro- tius de introd.*

*jur. Holl. par. 24. In hoc contractu bona fide versandum est, ut natura ultro citroq; obligatiois postulat. Locinius, lib. 2. cap. 5. §. 8.*

† 12 Car. 2. cap. 32.

† 14 Car. 2. cap. 7. 18.

\* 12 Car. 2. cap. 18.

So it is if a Merchant will Freight out Wooll, Leather, † and the like, or send out Goods in a Forraign bottome \* and then make a Policy, the Ship happens afterwards to be taken, by reason of which there becomes a forfeiture of Ship and Lading; the Ensurers are not made subject to answer the damage; for the very Foundation was illegal, and the Law supports only those Assurances that are made *bona fide*; for if otherwise, and men could be Ensured against such actions,

actions, they would destroy Trade, which is directly to thwart the institution and true intentions of all Policies.

But if Goods should happen to be lawfully Ensured, and afterwards the Vessel becomes disabled, by reason of which they relade by consent of the *super Cargoe* or Merchant into another Vessel; and that Vessel, after arrival, proves the Ship of an Enemy, by reason of which the Ship becomes subject to seizure: yet in this case the Ensurers shall answer, for that this is such an accident as is within the intention of the Pollicy.

*Ritterhus. ad leg. contrahens. 23. de Reg. jur. cap. 18. pag. 236, 237. Stypman dicto loco num. 335.*

Several men lade aboard Salt, without distinction, not putting them in Sacks, and the like; the Ship arrives, the Master delivers to their Principals according to their Bills of Lading as they come one by one, it falls out that some of the Salt is washt or lost by reason of the dampness of the Ship, and that the two last men cannot receive their proportion: There are in this case these things to be considered;

*Hill. 11 Jac. in C.B. LaSlop and Tomlinsons Case, Hobart 88.*

1. Whether the Master is bound to deliver the exact quantity?
2. Whether those that have received this loss can charge the Assurers?
3. Whether the Assurers can bring in the first men for a contribution, they having their Salt delivered to them compleatly.

Certainly the Master is not bound to deliver the exact quantity, nor is he obliged to redeliver the very specifical Salt, but onely as men are to repay Money or Corn by the distinction in a Bagg or Sack, and out of them; but if the fault was in not pumping, keeping dry his Deck, and the like, there is *contra*: though perhaps there may be special agreement.

*Inst. in pr. quib. mod. re. contrab. ob. te. l. 2. Si cert. peti. leg. quod convenit de veris. ob.*

Besides, this is a peril of the Sea against which the Master could not prevent, and of necessity he must deliver to one first before another.

As to the second, It is no question but that the Assurers shall answer. But whether they shall bring in the first men for contribution, may be some doubt.



P. Leg. in ma-  
nat.

It has been conceived by some, that they ought not; for they delivered their Salt to the Master *tanquam in Creditum*, and was not to expect the redelivery of the same specifical Salt: Besides, the Master must of necessity deliver to one man before another.

But by others it has been conceived they ought to contribute *per ratione*, for as Goods of necessity some must be stowed in the Hold, and that such Goods seldom fail without a perill of the Sea; so the rest must of necessity contribute to that misfortune, and so make no distinction.

The Bills of Lading are very useful to settle the difference between the Assuror and assured, of which there are 3. parts, one sent over Sea; the other left with the Master; and the last remaining with the Lader.

XVI. The Office of Assurance was Erected by the Statute of 43 Eliz. Cap. 12. which reciting, That whereas differences growing upon Policies of Assurances had been ordered by discreet Merchants approved by the Lord Mayor, who did speedily decide those causes, untill that of late years divers persons did withdraw themselves from that Arbitrary course, and have sought to draw the parties assured to seek their Moneys of every several Assurer by Suits Commenced in her Majesties Court to their great Charges and delay; whereupon it was Enacted, That the Chancellor or Keeper for the time being should issue forth a standing Commission (to be renewed yearly, or as often as to him shall seem meet,) for the hearing and determining of all such causes arising on Policies of Assurance as shall be entred in the Office of Assurance in London.

The Judges or Commissioners appointed are the Judge of the Court of Admiralty, the Recorder of London, two Doctors of the Civil Law, two Common Lawyers, 8. grave and discreet Merchants, or to any 5. of them; and that they or the greatest part of the Commissioners have power to Hear, Examine, Order and Decree all such causes in a brief and summary way without formality of pleading.

They have power to summon the parties, examine witnesses upon Oath, commit to prison upon refusal of obedience

obedience to their Decrees; they are to meet once a week at the Assurance Office, or some other convenient publique place, and no Fees at all are to be exacted by any person whatsoever.

There lyes an Appeal from their Sentence to the Lord Chancellor or Lord Keeper (but the party must depofite the moneys decreed, and then (though the party be imprisoned he may be discharged) and then it lyes in the Lord Chancellors or Keepers Breast to affirm or reverse, and to award the party assured double costs.

No Commissioner being party Assuror can act by vertue of this Commission, nor untill he hath taken his Corporal Oath before the Major and Court of Aldermen, To proceed uprightly and indifferently between party and party.

XVII. This was a good Act, had it been as carefully penn'd as was intended; for there were many things in which this Act did not extend to.

First, Any man may at this day make a private Policy notwithstanding this Act, which is as good and effectual in Law to all intents and purposes, as one made and entred in the said Office; and that such a Pollicy might and may be now sued at the Common Law.

Secondly, The number of Commissioners being so great that there could be no Court without 5. at the least; and without a Court they neither could summon parties or examine witnesses, and that was very difficult to get.

Thirdly, If the parties or witnesses refused to appear, they had no power to punish the party for the delay, with costs or otherwise, which was very mischievous.

Fourthly, No Commissioner could sit before he was sworn: Commissions and the Commissioners being often renewed, it was a trouble to be attending a Court of Aldermen, which was difficult sometimes of the year to get.

Fifthly, Though they had power to commit the party who refused to obey their Decree, yet they had no power to make any Order against the Ship.

Which

14 Car. 2.  
cap. 23.

Which matters being taken into consideration, it was Enacted, That 3. Commissioners, whereof a Doctor of the Civil Law, and a Barrister of 5. years standing to be one should make a Court, and to act as any 5. before might have done.

They have likewise power now given them to summon parties and witnesses, and upon contempt or delay in the witnesses upon the first summons and tender of reasonable charges: and in the parties upon the second summons to imprison offenders or give costs.

Every Commissioner is now to take his Oath before the Lord Major to proceed uprightly in the execution of the said Commission; and any of them may administer an Oath so as the adverse party may have notice, to the end such person may be fairly examined.

Commissions may issue out of the Court of Admiralty for examining of witnesses beyond Seas, or in remote places by directions of the Commissioners, and Decrees may be made against body and goods, and against Executors and Administrators, and Execution accordingly; and assess Costs of Suit as to them shall seem just.

But Execution cannot be against Body and Goods for the same debt, but the party must make his Election as at the Common Law.

*Oyles versus  
Marshall,  
Styles Rep.  
1654.*

XVIII. But these Statutes took not away that Cognizance which the Courts at *Westminster* claymed upon such Contracts by the Common Law; but onely gave this new erected Court a concurrent Jurisdiction with those at the Common Law: for though the loss happened out of the Realm, yet they had Jurisdiction of the Cause. And therefore if an Action is brought upon a Policy of Assurance, though the loss happened at Sea, yet the Jury shall enquire; for the loss is not the direct ground of the Action, but the Assumpsit.

*Dowdles case,  
Coke lib. 6. fo.  
47. 36 Eliz. in  
B. R.*

*38 H. 8. Crane  
and Beil, Co.  
4. Inst. 138,  
139.*

The Admiralty have likewise put in if not for an absolute Jurisdiction, yet at least a concurrent one; yet both have been denyed them, notwithstanding that the Judge of the Admiralty is Judge of the Court of Assurance.

XIX. By the making of an Office Policy according to the Statute, these advantages will follow. 1. If

1. If the Policy be lost, if the same be entred with the Register of the Office, the Entry is effectual to answer the matter both at the Common Law, as well as in the same Court; but a private Policy lost is like a Deed burnt, unless that there be very strong evidence, as a Copy and the like, it will be of little value. So that then there will remain nothing but an Equitable relief in *Chancery*, for the satisfaction the party.

2. If a man Freight out a Ship from *London* to *Cales*, and assures here, he may write to his Correspondent to make an assurance there of the same; if the matter comes before Commissioners, they may examine the Ensured upon Oath, and determine therein according to Law and the Custome of Merchants: But at the Common Law the same cannot be, but relief must be had in that point according to Equity in *Chancery*.

3. The same is a Court of Equity as well as a Court of Law.

4. They may decree against 20 Assurors at one time, but at Law they must be sued distinctly; but they cannot compel the Defendants to put in Bayl.

5. They may proceed out of Term as well as in Term; and (if the matter will bear it) they may finish a Cause in a fortnights time.

6. The Judgments there given are generally upon mature deliberation, and by persons well skilled in Maritime affairs; and if their Sentence is thought to be unreasonable, the Lord Chancellor or Lord Keeper may on Appeal determine the same.



## CHAP. VIII.

## Of Prifage and Butlerage.

- |                                                                                                                   |                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| I. What is Prifage, where taken, and of what.                                                                     | Vendee shall be chargeable.                                                                                                  |
| II. Merchant Strangers exempted from the same.                                                                    | VII. Where a Grant to discharge a particular Ship shall be good; and where a Grant to particular persons shall be otherwise. |
| III. When due, and the exemption of the Citizens of London from the same.                                         | VIII. Of Butlerage what and whom are exempted.                                                                               |
| IV. What Citizens are capable, and where not.                                                                     | IX. Where the King becomes entitled to those duties.                                                                         |
| V. A Forraigner imports and makes a Citizen Executor and dyes; whether he shall have the benefit of the Immunity. | X. A Grant to be free of all Customs, Impositions, &c. extends not to Prifage and Butlerage.                                 |
| VI. Where a Forraigner sells to a Citizen before, but he broken, the                                              | XI. Cinque-Ports exempted from Prifage.                                                                                      |

Dyer 92. 42.  
165.  
Fleta, lib. 2.  
cap. 21.

I. **P**rifage, is a certain taking or purveyance for wine to the Kings use; The same is an ancient Duty which the Kings of England have time out of mind had and received; the manner hath been by taking of every Ship or Vessel that should come into this Realm, if ten Tun, to have for Prifage one Tun: and if it contain 20 Tun or more, to have two Tun (*viz.*) *unum ante doleum*, and the other *deorsum*, paying 20 s. for each Tun: And this ancient Immunity they have enjoyed as a Flower of the Crown, and by some has been conceived not grantable away without Act of Parliament. But yet in 6 E. 3. fo. 3. Case 15. mentions the same to be grantable over.

II. King Edward the First having laid some Impositions on the Merchants, which in Anno 25. of his Reign being taken away with promise that neither he nor his Successors should do any such thing without Assent of Parliament: In 31. of his Reign they granted

granted him an encrease of Customes; in lieu of which he granted them many Immunities, as Release of Prifage, &c. Rott. Parl. 31 Ed. 1. cap. 1. & 2.

III. *Prifage* is not due till the unlading, or that which is commonly called breaking of Bulk; for the words are, *de qualibet navi important vini & difonerant inde.* Trin. 5 Jac. in B.R. *Kennycot* and *Boggens* cafe.

King Edward the Third by his Charter dated 6. Martij Anno Regni primi, granted his Royal Charter of difcharge to the Major, Commonalty and Citizens of London, in hac verba, (viz.) *Quod de vinis Civium nulla prifa fiat, fed perpetue inde effent quieti, &c.* which was afterwards allowed in the Exchequer. 44 Eliz.

IV. It is not every Citizen that is capable of this Priviledge, but onely thofe that are Refiant within the City: And fo it was Rul'd in the cafe of one *Knowls*, who being a Citizen and free Grocer of London, removed his Houfhould cum pannis, and did dwell at *Boiftol*, but yet kept his Shop in London; and a Ship of his arriving with Wines at London, and being unladen, the Prifage was demanded; he claymed the benefit of difcharge. It was adjudged, he was not capable of the fame: for he that will claym the benefit of this difcharge, ought to be *Civis incola Comorans.* 4 Hen. 6. *Knowles* cafe.

24 H. 6. (A Private Act of Parliament,) Complaint was made, That the Lord Major of London would make Strangers Citizens; It was there declared, That this benefit to be difcharged from payment of *Prifage*, did not extend to fuch Citizens as were *dotati*, made free, but unto thofe Citizens onely which are *comorant incolarum*, and refiant within the City. Hill. 43 Eliz. in B.R. Rott. Attorn' General, *verfus* *Sacheverell* and *Sneed*.

V. If a Forreigner brings a Ship laden with Wines into the Port of London, and then makes a Citizen his Executor and dyes, he fhall not have the benefit of this Immunity from payment of *Prifage* for thefe Wines, for that they are not *bona Civium.* Waller *verfus* *Hanger*, Bulftrod. 3. part, fo. 1.

VI. If a Forreigner arrives with a Ship laden with Wines

Wines at a Port with an intent to unlade, and before the Goods are entred or Bulk is broken, he fells them to a Citizen, *Prifage* shall be paid notwithstanding, for it was never the Kings grant to discharge a Citizen in such a manner.

VII. If the King does discharge such a Ship of *J.S.* being at Sea, particularly naming the same, from the payment of *Prifage*, and he dyes before the Ship arrives, no duty can be demanded.

But it has been held, If a particular person has a grant to him to be discharged of his Goods, and he dyes before the arrival, the duty shall be paid.

*Hanger's Case,*  
Hill. 13 Jac.

*Bro. tit. Dis-*  
*claymer, 47.*

*6 Ed. 3. fo. 5. 6.*  
*Archbishop of*  
*Yorks Case.*

*Sir John Da-*  
*vies in the*  
*case of Cu-*  
*stomes.*

A *Quo Warranto* was brought against three Archbishops of *York*, to shew cause why they demanded to have *Prifage* for Wines brought into the Port of *Hull*; The two first pleaded to have onely the first taste, and a pre-emption after *Prifage* paid: But the third pleaded a Charter of 15 E. 2. by force of which he claimed the same; and Rul'd not good. For though the Charter might be good, yet it was held in that case, a disclaymer by the Predecessor should bind the Successor: And at this day, the Duke of *Ormond* in *Ireland* hath an Inheritance in the *Prifage* of Wines by the Kings Charter.

VIII. *Butlerage* is a Custome due from Merchant-Strangers of 2 s. upon every Tun of Wine brought into this Realm by them.

King *John* granted to the Merchants of *Aquitaine* Trading for Wines thence into *England* divers Liberties, amongst others, *Libertatibus concessis Mercatoribus vinetarijs de Ducatu Aquitaniae reddendo Regi & heredibus suis 2. s. de quolibet dolio vini ducti per eisdem infra Regnum Angliae vel potestate Regis.*

*In libro Rubro*  
*in Scaccario*  
*Remem. fo. 265.*

*Rott. Chartarum*  
*Anno 31 E. 1.*  
*nu. 44. called*  
*Charta Mercat-*  
*oria.*  
See the Char-  
ter at large in  
the Chap. of  
Customs.

All Merchants Strangers in consideration of the Grant to them by the King of divers Liberties and Freedomes, *Concesserunt de quolibet dolio vini quod adducent vel adduci facerent infra Regnum &c. solvent nobis & heredibus nostris nomine Custumae duos solidos &c.*

It

It is called *Butlerage*, becaufe the Kings chief Butler doth receive it. And the double value of thefe Duties is made penal if any person cuftomes Goods in another mans name whereby to defraud the King of *Prifage* and *Butlerage*. Stat. 1 H. 5. 2 Ed. 6. 22.

**IX.** Breaking of Bulk is that which entitles the King to the Duty: for if a Merchant Imports Wines to the number of 20 Tuns, yet if he unlades but part, as 9. or 4. Tun, yet the King fhall have the entire *Prifage*; and though the Cuftome feems to declare, that the taking muft be as well before as after the Maft, yet is not the Officer tyed to that ftrictnefs, but may take where he pleafes; for two Tuns are the Kings due: for otherwife he might be cozened, the Freighter perhaps lading other Commodities aboard after the Maft.

*Kenicott ver-  
sus Hoggan,  
Yelverton.  
Boytons Cafe,  
3. Rep. 44. 10.*

If there be but one Tun taken out, yet the Duty muft be paid: The reason is, for that otherwife the Officer fhould be obliged to travail perhaps all over the Kingdom.

**X.** The King granted to a *Venetian* Merchant that he fhould be quit, did *omnibus cuftumis Subfidijs & impofitionibus & omnibus alijs denariorum fummis debitis & folubilibus pro quibuscunq; Merchandixis importandis*; and that he fhould be as free as the Citizens of *London*: In that cafe it was adjudged in the *Exchequer*, That by that Grant the King did not difcharge him of *Prifage*, becaufe the *Prifage* was not fpecially expreffed in the Grant, although that the City of *London* were by a fpecial Charter freed of *Prifage*.

*Vouched in  
the cafe of Cu-  
ftomes in Sir  
John Davies  
Reports.*

**XI.** The *Cinque-Ports* are likewise difcharged of *Prifage*. Cl. 1 E. 1. m. 5.



## CHAP. IX.

Of Pylots, Wharfage, Primage, Averidge,  
Loadmanage.

- |                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of the Pylots charge till the Ship is brought to her place or bed.</p> <p>II. If the Ship is likely to miscarry, what the Ships Crew may do at such time.</p> <p>III. Of Ignorant Pylots their punishment, and if the Ship miscarries, who shall Answer.</p> <p>IV. Of wharfage, and where the wharfinger shall answer, and where not.</p> | <p>V. Primage and Potilodmanage where due, and for what; and if the Ropes break, where the Master, and where the wharfinger shall answer.</p> <p>VI. Petty Averidge where due, and for what, and Hatt money.</p> <p>VII. Loadmanage where due, and for what.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **BY** the Lawes of *Oleron* after that the Pylot hath brought the Ship to sure Harbour, he is no further bound or lyable; for then the Master is to see her bed and to her lying, and bear all the rest of her Burthen, charge and danger, except that of the act of God; So that before she comes to her place or bed, and while she is under the Pylot's charge, if she or her Goods perish, or be spoyled, the Pylot must make good the same.

*Leg. Oleron,*  
*Cap. 23.*

II. By the Lawes of *Oleron*, if his fault is apparantly grosse that the Ships Crew sees an apparent Wreck, they may then lead him to the Hatches and strike off his head; But the Lawes of *England* allow no such hasty execution.

By the Lawes of *Denmark*, an ignorant Pylot is to pass thrice under the Ships Keel.

The Master generally in the Charterparty covenants to find a Pylot, and the Merchant covenants to pay him his Pilotage.

III. But

III. But if a Ship should miscarry coming up the River under the Charge of the Pylot, it has been a Question, Whether the Master should answer in case of the insufficiency of the Pylot; or whether the Merchant may have his remedy against both? It hath been conceived the Merchant hath his Election to charge either; and if the Master, then he must lick himself whole of the Pylot.

IV. *Wharfage* is money paid for landing Wares at a Wharfe, or for shipping or taking in Goods into a Boat or Barge, they commonly keep Boats or Lighters of their own for the carrying out and bringing in of Goods, in which if a loss or detriment happens, they may in some cases be made lyable.

An Action of the Case grounded on the Custome of the Realm was brought against the Defendant Master of a Wharfe, for not safe delivering of Goods, &c. The Case appeared to be thus; The Master unladed a Bale of Silk into the Wharfingers' Lighter, and sent part of his Marriners to convey it ashore; it happened that the Goods were stole: The Question was, Whether the Wharfinger or the Master should answer? Upon a Tryal at *Guild-Hall* before my Lord Chief Justice *Hale*, it was there Rul'd, That the Master was lyable, and not the Wharfinger; for till they are landed, the Master hath them under his power: but if goods are to be sent aboard, there if they miscarry in their passage, the Wharfinger must answer.

*Randall ver-*  
*sus Hilton*  
*and Butler.*  
*Pasch. 26 Car.*  
*in B. R.*

V. *Primage* and *Petilodmanage* is likewise due to the Master and Marriners for the use of his Cables and Ropes to discharge the Goods; and to the Marriners for loading and unloading of the Ship or Vessel, it is commonly about twelve pence *per Tun*.

*32 H. 8. cap.*  
*14.*

If the Ropes break in hoisting of Goods out of the Ship into the Lighter or Boat, the Master must answer if the Goods be damnified or lost.

*Leg. Oleron.*  
*Cap. 10.*

But if the Roapes break at the Crane in taking them out of the Lighter, (although till they are landed, they

E e .

are

Co. Entry,  
fo. 2.

are not out of the Masters custody) yet the Wharfinger shall answer.

Some conceive that the Averidge mentioned in the Bills, is that which is the Averidge or Contribution for losses.

**V I.** *Petty Averidge* is another little small Duty which Merchants pay to the Master when they onely take Tunnage, over and above the Freight, the which is a small recompence or gratuity for the Masters care over the Lading; and in the Bills of Lading they are exprest after Freight, together with *Primage* and *Averidge* accustomed.

The *French* Ships commonly term the Gratuity *Hatt-Money*, and our *English* Merchants pay it our Masters over the Freight, it is sometimes more, sometimes less; two or three Pieces.

*Reughton, Artic. Enquiry,*  
27, 28.

**V II.** *Loadsmen*, is he that undertakes to bring a Ship safe through the Haven to the Key or place of discharge, and if thorough his ignorance, negligence or other fault he suffereth the Ship or Merchandize to perish, an Action lyes against him at the Common Law; and by some conceived he may be punished in the Admiralty, but not in both.

The Hire is called *Loadmanage*, the which the Pyrate receives of the Master for conducting the Ship up the River, or into the Port to her convenient Bed.

*Per Leg. Oleron*  
*Cap. 15.*

If two Ships lye in a Harbour, and the Anchor of one is feared may occasion to damnifie the other, if after request and refusal (and there be probable cause, the other may take up the same, and let the same down at a further distance, and the same is opposed or hindred, if any damage happens they are to make full satisfaction; so it is if they lay out an Anchor and neglect the placing of a *Buoy* to the Anchor, and damage happen thereby, they are not onely subject to be punished in the Admiralty, but likewise to render satisfaction to the party damnified.

If two Ships be in the River, and the one falls foul on the other both being laden, by the Law Maritime the Contribution is to be in Common, and to be equally

ly divided and apprized half by half; but then the *Mar-*  
*riners* must swear there was no fault in them: for other- *Per Leg. Oleron*  
wise one that hath an old rotten Vessel which he can *Cap. 14.*  
no wayes dispose of, may so order the matter as to lay  
her in the way of a good Ship under sayl, so that the  
same may be answered in damage: but when the Con-  
tribution is made equal, then the contrivance will be  
avoided.

---

E c 2

CHAP.



## CHAP. X.

## Of Bills of Exchange.

- I. Of the Antiquity of Exchange by the Hebrew Law.
- II. Of the Antiquity of Exchange by the Romans.
- III. Of Exchanges by other Nations in imitation of those people.
- IV. Of the several sorts of Exchanges, and of Cambio commune.
- V. Of Cambio real, or Exchanges value for value.
- VI. Of Cambio ficco, or dry Exchanges.
- VII. Of Cambio fictitio, or feigned Exchange.
- VIII. Of the Exchanges used this day, and on what.
- IX. How Exchanges are made, and upon Moneys in London.
- X. Moneys paid generally, how repaid by Exchange.
- XI. Of Bills of Exchange payable at single usance.
- XII. Bills of Exchange at double or treble usance, and of the customary usances to certain places from London and Amsterdam to other places.
- XIII. Of the nature of Bills of Exchange, and how esteemed of by the Lawes of England.
- XIV. Bills drawn more then one, no prejudice to the parties; and of the true measure of judging on Bills by Custome.
- XV. What amounts to an acceptance generally, and on refusal where to be protested.
- XVI. All the drawers are made lyable; and whether the party to whom the Money is made payable is bound to procure an acceptance.
- XVII. Protest, what is meant by the same; and where the same is necessary, and where not.
- XVIII. Bill drawn on two persons, where the same is necessary, and where not.
- XIX. One Factor serves a Company, where a Bill accepted of his by one of the Company obliges the rest, and where not.
- XX. What words amount to an acceptance, and what not.
- XXI. Where a Bill may be accepted for part, and what must be done with the Bill thereupon.
- XXII. When a Countermand may legally be made, and when not.
- XXIII. How the several parties interested in a Bill of Exchange are obliged and fettered to each other.
- XXIV. How a Collateral security may be annexed to a Bill when the time is elapsed for non-payment.
- XXV. Where the Protest is only necessary to be kept, and where that and the Bill must both be remitted.
- XXVI. Bill lost, what is necessary for the parties interested in such case to act.
- XXVII. Of blank Endorsements, and the validity of the same.
- XXVIII. A Bill once accepted, whether

whether the same may be revoked; and whether it may be accepted to be paid at a longer time then is mentioned: and what Protests are then necessary to be made.

XXIX. Of Bills accepted for the honour of the drawer, where the same shall oblige.

XXX. The time customary allowed for payment after failure of payment at the day.

XXXI. Of the validity of the speedy protest as in relation to recover the money to be paid on the drawer.

XXXII. Bill accepted, and before the day of payment the Acceptor is a sayling, what's necessary to be done as in reference to obtaining better security.

XXXIII. Bills accepted for the honour of the drawer, where

turned into an act and remitted by him that gives honour to the Bill.

XXXIV. The Acceptor ready to pay, but the party to whom made payable is dead, what is necessary.

XXXV. Causes general for a Protest, and where satisfaction to the deliverer discharges all parties.

XXXVI. Of Exchange by way of Credit.

XXXVII. One payes a Bill before it be due, and the party to whom the same was paid fails, where he shall be answerable to the drawer notwithstanding.

XXXVIII. Of Bills assignable over according to the Customes of Merchants; what operation in England.

I. **T**HE Exchange for Moneys is of great Antiquity as well by observation of the Hebrew Customes, as those of the Romans.

Upon the first of the Month *Adar*, Proclamation was made throughout all *Israel*, That the People should provide their half *Sheckles* which were yearly paid towards the Service of the Temple according to the Commandement of God; on the 25th of *Adar* then they brought *Tables* into the Temple, (that is, into the outward Court where the people stood) on these *Tables* lay the lesser Coyns which were to furnish those who wanted half *Sheckles* for their Offerings, or that wanted lesser pieces of money in their payment, for *Oxen*, *Sheep*, *Doves* and the like which stood there in a readines in the same Court to be sold for *Sacrifices*; but this supply and furnishing the people from those *Tables* was not without an *Exchange* for other money, or other things in lieu of money, and that upon advantage: Hence all those that sat at the *Tables* were called chief *Bankers*, or Masters of the *Exchange*.

*Exod. 30. 31.*

*Moses Kotsenles  
Printed at Venice  
1557. de  
Sicilis, fo. 122.  
Col. 2.*

Alex. Gendier.  
l. 5. cap. 30.

II. By the *Romans* it is supposed to be in use upwards of 2000 years, Moneys being then elected out of the best of Metals to avoid the tedious carriage of Merchandize, from one Countrey to another: So other Nations imitating the *Jewes* and *Romans*, erected Mints, and coyned Moneys, upon which the Exchange by Bills was devised, not onely to avoid the danger and adventure, but also its troublesome and tedious carriage.

III. Thus Kingdoms and Countreys having by their soveraign authorities coyned Moneys, caused them to appoint a certain Exchange, for permutation of the various Coyns of several Countreys, without any transportation of the Coyn, but giving *par pro pari*, or *value for value*, with a certain allowance to be made those *Exchangers* for accommodating the Merchants.

IV. As Commerce became various, so Exchange numerous; but generally reduced to four, *Cambio Commune*, *Cambio real*, *Cambio sicco*, and *Cambio fictitio*.

Reg. Orig.  
194.  
Statut. 5 R.2.  
cap. 2.  
3 H. 7.6.

*Cambio Commune* in *England* was those that were Constituted by the several Kings, where having received Moneys in *England*, would remit by Exchange the like sum to be paid in another Kingdome. *Edward the Third*, to ascertain the Exchange, caused Tables to be set up in most of the general Marts or Ports of *England*, declaring the values of all or most of the Forraign Coyns of those Countries where his Subjects held correspondence or Commerce, and what allowances were to be made for having Moneys to be remitted to such Countreys or Kingdoms.

18 E. 3.  
Acton Barmel.

V. *Cambio real*, was when Moneys were paid to the Exchanger, and Bills were drawn, without naming the Species, but according to the value of the several Coyns, which two Offices afterwards were incorporated, and indeed was no more but upon payment of Moneys here in *England* to be repaid the just value in money in another Countrey, according to the price agreed upon between the Officer and deliverer to allow or pay for the exchange of the money and the loss of time.

VI. *Cambio*

V I. *Cambio ficco*, or dry Exchange, is when a Merchant hath occasion for 500 l. for a certain time, and would willingly pay interest for the same; the Banker being desirous to take more than the Statute gives, and yet would avoid the same, offers the 500 l. by Exchange for *Cales*, whereunto the Merchant agrees; but the Merchant having no correspondence there, the Banker desires him to draw his Bill, to be paid at double or treble usance, at *Cales*, by *Robin Hood*, or *John-a-Noakes* (any feign'd person) at the price the Exchange is then current; accordingly the Merchant makes the Bill, and then the Banker payes the moneys; which Bill the Banker remits to some Friend of his to get a Protest from *Cales* for non-payment, with their Exchange of the money from *Cales* to *London*, all which with costs, the Merchant is to repay to the Banker; sometimes they are so conscientious as not to make above 30 per Cent.

This Usury was first introduced by the *Jewes* here in *England*.  
Vide Co. 2.  
Inst. fo. 505.

VII. *Cambio fictitio*, when a Merchant hath occasion for Goods to Freight out his Ship, but cannot well spare money; The Owner of the Goods tells him he must have ready money; the buyer knowing his drift it is agreed, that the seller shall take up the moneys by Exchange for *Venice*, or any other parts; but then the Merchant must pay for Exchange and re-exchange.

So likewise where the Merchant is become indebted to the Banker, they are contented to stay, the Merchant paying Exchange and re-exchange; the which he will most certainly compel him to do.

These two last wayes of grinding the face of the 3 & 4 H. 7. generous Merchant, was afterwards prohibited, but, notwithstanding it was found impossible to moderate the inequality of Exchanges, and to have value for value: so that at this day it seems to be a Cold, that many an honest man is apt to catch.

VIII. The just and true Exchange for Moneys that is at this day used in *England* (by Bills) is *par pro pari*, according to value for value; so as the *English* Exchange, being grounded on the weight and fineness of our own Moneys, and the weight and fineness of the Moneys of



Alex. Gendier.  
l. 5. cap. 30.

II. By the *Romans* it is supposed to be in use upwards of 2000 years, Moneys being then elected out of the best of Metals to avoid the tedious carriage of Merchandize, from one Countrey to another: So other Nations imitating the *Jewes* and *Romans*, erected Mints, and coyned Moneys, upon which the Exchange by Bills was devised, not onely to avoid the danger and adventure, but also its troublesome and tedious carriage.

III. Thus Kingdoms and Countreys having by their soveraign authorities coyned Moneys, caused them to appoint a certain Exchange, for permutation of the various Coyns of several Countreys, without any transportation of the Coyn, but giving *par pro pari*, or *value for value*, with a certain allowance to be made those *Exchangers* for accommodating the Merchants.

IV. As Commerce became various, so Exchange numerous; but generally reduced to four, *Cambio Commune*, *Cambio real*, *Cambio sicco*, and *Cambio fictitio*.

Reg. Orig.  
194.  
Statut. 5 R.2.  
cap. 2.  
3 H. 7.6.

*Cambio Commune* in *England* was those that were Constituted by the several Kings, where having received Moneys in *England*, would remit by Exchange the like sum to be paid in another Kingdome. *Edward the Third*, to ascertain the Exchange, caused Tables to be set up in most of the general Marts or Ports of *England*, declaring the values of all or most of the Forraign Coyns of those Countries where his Subjects held correspondence or Commerce, and what allowances were to be made for having Moneys to be remitted to such Countreys or Kingdoms.

18 E. 3.  
Acton Baryel.

V. *Cambio real*, was when Moneys were paid to the Exchanger, and Bills were drawn, without naming the Species, but according to the value of the several Coyns, which two Offices afterwards were incorporated, and indeed was no more but upon payment of Moneys here in *England* to be repaid the just value in money in another Countrey, according to the price agreed upon between the Officer and deliverer to allow or pay for the exchange of the money and the loss of time.

VI. *Cambio*

V I. *Cambio ficco*, or dry Exchange, is when a Merchant hath occasion for 500 l. for a certain time, and would willingly pay interest for the same; the Banker being desirous to take more than the Statute gives, and yet would avoid the same, offers the 500 l. by Exchange for *Cales*, whereunto the Merchant agrees; but the Merchant having no correspondence there, the Banker desires him to draw his Bill, to be paid at double or treble usance, at *Cales*, by *Robin Hood*, or *John-a-Noakes* (any feign'd person) at the price the Exchange is then current; accordingly the Merchant makes the Bill, and then the Banker payes the moneys; which Bill the Banker remits to some Friend of his to get a Protest from *Cales* for non-payment, with their Exchange of the money from *Cales* to *London*, all which with costs, the Merchant is to repay to the Banker; sometimes they are so conscientious as not to make above 30 per Cent.

This Usury was first introduced by the *Jews* here in *England*.  
Vide Co. 2.  
Inst. fo. 506.

VII. *Cambio fictitio*, when a Merchant hath occasion for Goods to Freight out his Ship, but cannot well spare money; The Owner, of the Goods tells him he must have ready money; the buyer knowing his drift it is agreed, that the seller shall take up the moneys by Exchange for *Venice*, or any other parts; but then the Merchant must pay for Exchange and re-exchange.

So likewise where the Merchant is become indebted to the Banker, they are contented to stay, the Merchant paying Exchange and re-exchange; the which he will most certainly compel him to do.

These two last wayes of grinding the face of the 3 & 4 H. 7. generous Merchant, was afterwards prohibited, but, notwithstanding it was found impossible to moderate the inequality of Exchanges, and to have value for value: so that at this day it seems to be a Cold, that many an honest man is apt to catch.

VIII. The just and true Exchange for Moneys that is at this day used in *England* (by Bills) is *par pro pari*, according to value for value; so as the *English* Exchange, being grounded on the weight and fineness of our own Moneys, and the weight and fineness of the Moneys of

each other Countrey, according to their severall Standards proportionable in their valuation, which being truly and justly made, ascertains and reduces the price of Exchange to a sum certain for the Exchange of Moneys to any Nation or Countrey whatsoever: As for instance,

If one receives 100 l. in *London* to pay 100 l. in *Exeter*; this by the *Par*.

But if a Merchant receives 100 l. in *London* to pay 100 l. at *Paris*, there the party is to examine and compare the *English* weight with the weight of *France*, the fineness of the *English Sterling* Standard with the fineness of the *French* Standard; if that at *Paris* and that at *London* differ not in proportion, then the Exchange may run at one price, taking the denomination according to the valuation of the Moneys of each Countrey; but if they differ, the price accordingly rises or falls: and the same is easily known, by knowing and examining the real fineness of a *French* 5 s. piece, and an *English* 5 s. piece, and the difference which is to be allowed for the want of fineness or weight, which is the Exchange, and so proportionably for any Sums or Moneys of any other Countrey; the which is called *Par*, or giving value for value.

\* And therefore some are of opinion, that there can be no certain rate set on the *Par* in Exchange,

But this Course of Exchange \* is of later years abused, and now Moneys are made a meer Merchandize, and does over-rule Commodities, and Moneys rise and fall in price according to the plenty and scarcity of money.

to answer justly the value of the Coyms of Forraign Parts, by reason of the diversity of them, and of their intrinsecal values. *Vide* Sir Robert Cottens *Posthuma*, fo. 306.

IX. As Money is the common measure of things between man and man within the Realm, so is Exchange between Merchant and Merchant within and without the Realm; The which is properly made by Bills when Money is delivered simply here in *England*, and Bills received for the repayment of the same in some other Country either within the Realm or without the Realm, at a price certain, and agreed upon between the Merchant and the Deliverer.

For

For there is not at this day any peculiar or proper Money to be found in Specie whereupon Outland Exchanges can be grounded; therefore all Forraign Coyns are called imaginary,

At *London* all Exchanges are made upon the pound sterling of 20 s. and 12 d. to the shilling, for *Germany*, *Low-Countries*, and other places of Traffique; and for *France* upon the *French Crown*: for *Italy*, *Spain*, and some other places, upon the *Ducat*: For *Florence*, *Venice*, and other places in the *Streights*, commonly by the *Dollar*, and *Florin*.

Cro. 2. fo. 7.

Martin versus

Bour. Pasch.

1 Jac. in B.R.

X. Bills drawn to be paid, are either at sight, or a time certain, single, double or treble usance; and are commonly about 3. for fear of any miscarriage.

The taking and delivering money at sight binds the taker up to give his Bill to pay at sight, or within some short time the like sum after such a rate the Pound, Dollar, Ducat or Crown, as is agreed between them in Forraign Coyn, either according to the valuation of Moneys, or currant Moneys for Merchandize.

XI. The second time of payment is called *Usance*, it is known or taken to be the compass of one month, to be computed from the date of the Bill, and that governed according to the custome of the place where those Exchanges do run.

XII. The third is double or treble *Usance* 2. or 3. months; sometimes there are Exchanges made upon half *Usance*.

The times of payment do alter the price of Exchanges according to time, commonly after 12, 15, or 20 in the Hundred by the year.

Usance



Uſance from London to	Middleborough	are generally accounted one monthstime from the date of the Bill.	The Bills may have a larger, ſometime a ſhorter time, there is no direct certainty, but only that ſingle Uſance is a month, double Uſance 2. months,&c.
	Amſterdam		
	Antwerpe		
	Bridges		
	Rotterdam		
	Liſle		
Uſance from Amſterdam to	Roane	Are generally accounted 2 months from the date,&c.	
	Paris		
	Rome		
	Genoa		
	Venice		
	Naples		
From London to	Palermo	is ſometime accounted treble Uſance from the date of the Bill.	
	Luca		
	Sevill		
	Lisbon		
	Florence		
	Venice		
	Leighorne		
	Zant		
	Aleppo		
	Lucz.		

XIII. *Excambium vel Cambium*, or as the Civilians term, *permutatio*; *Billa Excambij* ſignifieth no more but a cuſtomary Bill, ſolempnized by a numerous conſent of Traders, to have a reſpect more then other Bills, though of as high and as intrinſical a value: And thoſe that give ſuch Bills were called *Exchangers*, or *Ban-  
kers*.

Though the Act was no more but to keep up the life of Commerce, (without which it is impoſſible for any Nation to flouriſh;) yet could not any perſon draw ſuch Bills, or return Money beyond Seas, without Li-  
cencce firſt obtained of the King.

Reg. Orig. ſo.  
194.  
Statut. 5 R.2.  
Cap. 2.

But

But at this day any man may do it without being obliged to obtain such leave.

XIV. Such a Bill being drawn, they commonly take one or two more of the same date word for word, onely this Clause is inserted in the second, My first of the same date persons and sum not being paid: And in the third, My first and second of the same date, and contents not being paid.

The right measure of judging on Bills of Exchange, is purely by the laudable Custome often reiterated over and over, by which means the same hath obtained the force of a Law, and not the bare and single opinion of some half-fledg'd Merchants: For Bills of Exchange are things of great moment as to Commerce, and are neither to be strained so high, as that a man should not cast his eye on them but the same shall be taken to be an acceptance: nor on the other hand having duly accepted them, the same should be rashly and unadvisedly avoided, by the shallow fancy of such nimble pated shufflers; but they are soberly judged and governed, as the same hath generally been approved of and adjudged of in former Ages.

*Consuetudo  
quandocumque, pro  
lege servatur,  
sicut Bracton,  
in partibus ubi  
fuerit more  
utentium appro-  
bata; longævi  
enim temporis  
usus & consue-  
tudinis non est  
vilis authori-  
tas, lib. 1.  
cap. 3.*

XV. A Bill being remitted, the party is to go immediately to the person to whom the same is directed, and present the same in order to his acceptance; if it be tendred, and the party subscribes *Accepted*; or, *Accepted by me A.B.*; or being in the Exchange sayes, *I accept the Bill, and will pay it according to the Contents*; this amounts without all controverſie to an Acceptance.

But if the same be refused, the party must then procure a *Protest*, and remit the same to the *Deliverer*, who is to resort to the *Drawer* for satisfaction for the principal costs and damage,

*Words are  
made to sig-  
nific things;  
By the word,  
Deliverer, is  
meant he that*

payes the Money beyond Sea. By the word, *Drawer*, he that writes or drawes the Bill of Exchange; the person upon whom, is called the *Acceptor*.

XVI. If

XVI. If there be several *Drawers* who subscribe, all are liable in case of a Protest.

Nor is any such thing as a 3. dayes respire to be allowed for acceptance.

If a Bill is drawn upon a Merchant in *London* payable to *J.S.* at double *Usance*, *J. S.* is not bound in strictness of Law to procure an acceptance, but onely tender the Bill when the Money is due : but Merchants which generally have generous spirits will not surprize a man, but will first procure an acceptance, for at least leave the Bill for the party to consider and give his answer, and then give advice of the same, and if the money be not paid, then protest.

XVII. A protest is no more but to subject the drawer to answer in case of non-acceptance or non-payment ; nor does the same discharge the party Acceptor, if once accepted ; for the Deliverer hath now two remedies, one against the Drawer, and the other against the Acceptor.

To entitle the party to an Action at Law in *England* against the Acceptor, it matters not whether there be a Protest ; but to entitle the party to a recovery against the Drawer beyond the Seas or elsewhere, there must be a Protest before a Publique Notary.

*Per fasonem in lege allegantur ff. de conditionibus indebiti.*

XVIII. A Bill drawn on two joyntly must have a joynt acceptance, otherwise it must be protested, but to two or either of them, *è cont.*

Then if the same be accepted by one, it is pursuant to the tenour of the Bill, and ought not to be protested, but in case of non-payment ; and in that case the person acceptor is lyable to an Action : but if it be on joynt Traders, an acceptance by one will conclude and bind the other.

XIX. A Factor of the *Hamborough, Turkey, or India* Company drawes a Bill on the same, and a member accepts the same, this perhaps may make him lyable, but not another member.

So it is if 10 Merchants shall imploy a Factor at the *Canaries*, and the Factor drawes a Bill on them all, and one

one of them accepts the Bill, and then refuses payment; this will not oblige the rest.

But if there be 3. Joynt Traders for the common stock and benefit of all there, and their Factor drawes a Bill on them; the acceptance of the one will oblige the residue of the Company.

Mich. 19 Jac.  
C.B. Vanbeath  
versus Turner,  
Winch. 24, 25.

X X. A small matter amounts to an acceptance, so that there be right understanding between both parties; As, *Leave your Bill with me and I will accept it: Or, Call for it to morrow, and it shall be accepted;* that does oblige as effectual by the Custome of Merchants, and according to Law, as if the party had actually subscribed or signed it, (which is usually done.)

But if a man shall say, *Leave your Bill with me, I will look over my Accounts and Books between the drawer and I, and call to morrow, and accordingly the Bill shall be accepted;* this shall not amount to a compleat acceptance: for this mention of his Book and Accounts, was really intended to see if there were effects in his hands to answer, without which perhaps he would not accept of the same. And so it was Rul'd by L. Chief Justice Hale at Guild-Hall.

Trin. 20 Car.  
2 in B. R.,

A Bill may be accepted for part, for that the party upon whom the same was drawn had no more effects in his hands; which being usually done, there must be a protest, if not for the whole sum, yet at least for the residue: however, after payment of such part there must be a protest for the remainder.

The receiving  
of part of the  
Moneys upon  
the Bill, does  
no wayes wea-  
ken the Bill.

X X I I. Any time before the money becomes due, the Drawer may countermand the payment, although the Bill hath been accepted.

Per leg. publica  
in si ff. depositi  
& per Bart.  
ibidem, & per  
Romanum sin-  
gulari, 474.

The Countermand is usually made before a Notary; but if it comes without, so it comes under the parties hand, it is well enough.

If the Bill be accepted, and the party desires to have the money before it be due, and it is paid, and then there



there comes a countermind; it hath been conceived, that he ought not to be allowed, for as he could not enlarge the time, so he could not shorten it, but his duty is to follow his Order.

Words are made to signify things; Therefore by the word, *Deliverer*, is meant he that payes the Money: he that draws the Bill is called

the *Taker* or *Drawer*: And the party upon whom, is called the *Accepter*.

XXIII. *Note*, The *Drawer* is bound to the *Deliverer*, and the *Accepter* to the party to whom the Bill is made payable; yet both are not bound to one man, unless the *Deliverer* be a servant to the party to whom the money is made payable; or the party to whom the money is made payable be servant to the *Deliverer*: yet both *Taker* and *Accepter* are lyable till the Bill is paid.

*Stylis*, Pasch. 1654. in B. R. fo. 370.

XXIV. Therefore when you bring your Action, be sure to draw your Declaration accordingly, and make the same part of the Custom as you set it forth; for if you vary, you must expect to be nonsuited: and the party is not bound to alledge a particular place of demand.

If a Bill be returned protested for want of payment, the *Drawer* is to repay the money and damage, or else he may procure a security, which is no more but another person of value subscribes the Bill, in these or the like words, *I here underwritten do bind my self as Principal, according to the Custom of Merchants, for the summe mentioned in the Bill of Exchange whereupon this Protest is made, Dated, &c.*

Now the *Drawer* by vertue of this supplymental agreement hath as much time again to pay the Moneys as there was given him in the Bill when it was first drawn; so that if the money is not then paid, together with the *Rechange* and Charges of the party, the party may recover the same on the *Principal* or *Security*.

\* That is for not payment, the Bill being once accepted.

XXV. Beyond the Seas the protest \* under the *Notary's* hand is sufficient to shew in Court without producing the very Bill it self. But if a Bill in *England* be accepted,

accepted, and a special Action grounded on the Custom be brought against the Acceptor, at the Tryal the party Plaintiff must produce the Bill accepted, and not the Protest; otherwise he will fail in his Action at that time.

Therefore it is safe that a Bill once accepted be kept, and onely a Protest for non-payment be remitted; but a Bill protested for not acceptance must be remitted.

XXVI. If a Bill is left with a Merchant to accept, and he loses the Bill (or at least it is so mis-laid that it cannot be found;) if the party shall request the Merchant to give him a Note for the payment according to the time limited in the Bill of Exchange. Otherwise there must be two Protests, one for not acceptance, the other for non-payment; but if a Note is given for payment, if there happens to be a failer, yet in that case there must be Protest for non-payment.

XXVII. A Bill is remitted to *J. S.* who owes moneys to *J. D.*: *J. S.* delivers the Bill to *J. D.*, and on the back-side subscribes his name; if *J. D.* receives the moneys, he may fill up the blank as if the moneys had been actually paid to *J. S.*: This is practised amongst Merchants, and by them reputed firm and good. But certainly the Common Law looks upon this filling up of Blanks after a man hath once signed or sealed, to be no better then a harmless forgery.

*Note.* No person be it Wife or Servant, can accept of a Bill of Exchange to bind the Master without a lawful authority, as a Letter of Attorney, and the like, which must be under-hand, unless that it has been formerly and usually done by the Wife or Servant in such case, when the Master hath been out of Town; who hath approved of the same and answer'd payment: it must be usually done; but one Partner may for another.

*Styles Reports,*  
in B.R. 370.

A Servant of Sir Robert Clayton and Mr. Alderman Morris, (but at that time actually gone from them) took up

*Monck* versus  
*Clayton Mil*,  
and *Morris*.  
Mich. 22 Car.  
2. in B. R.

up 200 Guineys of Mr. *Monck* a Goldsmith, without any authority of his Masters; (but *Monck* did not know that he was gone) the Moneys not being paid, *Monck* brought an Action against Sir Robert *Clayton* and *Morris*, and at *Guild-Hall* it was Rul'd per *Keeling* Chief Justice, That they should answer; and there was a Verdict for the Plaintiff: And though there was great endeavours to obtain a new Tryal, yet it was denyed, the Court at *Westminster* being fully satisfied that they ought to answer: for this Servant had used often to receive and pay moneys for them; and thereupon they actually paid the moneys.

And though the same seems an act of Wisdom for Merchants and others so to take, yet it oftentimes

*Note*, That which will oblige the Master, will be the authority and liberty which he usually gives the Servant; therefore such a power devolved, ought to be secured by the prudent way that may be; which is generally done by Bonds and Obligations.

proves the destruction of many a Family; The Father puts out the Son perhaps with no less then 2 or 300 l; and is himself become bound for his Truth and just Accounting, &c. The Servant is immediately trusted with his Cash, and then he too young experienc'd in the World, either neglects keeping a iust account, or keeping that, subjects his Masters Cash to be spent by himself and those who make it their sole Trade to betray such Youths: The Master finding the consumption, calls his Servant to account, who conscious of the act, forsakes his Service, dares not see his Relations, and then as a general consequence falls into a Company, the which nothing but Providence can preserve from taking their wicked courses. The Father is called to answer, (what ever the Master does say the Servant hath spent or imbezled) none being able to contradict him, he must with a heart full of grief submit to and pay, besides the loss of the Moneys advanced upon the Servant's first putting forth: Which sometimes proves a great affliction in a Family. On the other side, if Servants were not to be entrusted, the Mystery could not be learnt, nor the business dispatched; and therefore faith must be given: but then it were Justice and Honesty that as a Father puts perhaps the Child of his love to one in whom he reposes a faith and trust, that the Master should be then as a Parent, so they should prevent all occasions that might subject them to Temptations, and not be over-hasty in Trusting them with the Cash; which is the very Bait our *London* Gamesters catch such Gudgeons.

If a Bill of Exchange by contrary Wind or other occasions be so long on the way that the Usance or time limited by the Bill be expired, and being tendred, both acceptance and refusal are denyed; protests for both must

must be made, and the Drawer must answer the value, rechange and damage.

XXVIII. A Bill once accepted cannot be revoked by the party that accepted it, though immediately after and before the Bill becomes due, he hath advice the Drawer is broke.

*Rastal 339.  
Bald. in rubr.  
de constitut.  
pecunia in ult.  
Col. & leg.  
quidem ff. eo-  
dem Col. penult.*

If a Bill is not accepted to be paid at the exact time, it must be protested; but if accepted for a longer time, the party to whom the Bill is made payable must protest the same for want of acceptance according to the tenour: yet he may take the acceptance offered notwithstanding. Nor can the party if he once subscribes the Bill for a longer time, revoke the same, or blot out his name, although it is not according to the tenour of the Bill; for by his acceptance he hath made himself debtor, and owns the draught made by his Friend upon him, whose right another man cannot give away, and therefore cannot refuse or discharge the acceptance.

*Note.* This case will admit of two Protests, perhaps three:

1. One Protest must be made for not accepting according to the time.
2. For that the money, being demanded according to the time mentioned in the Bill, was not paid.
3. If the Money is not paid according to that time that the Acceptor subscribed or accepted.

*Bald. in Leg.  
pro debito.  
C. de bon. actor.  
Judi. possiden.  
& per Bartol.  
in Leg. singula-  
ria. Col. 7. ff.  
probatur.*

A. drawes a Bill on B, and B. is in the Country; C. a Friend of his hearing of the Bill accepts it: the party to whom the money is to be paid must make a protest for non-acceptance by B, and then he may take the acceptance of C, and it shall bind C. to answer the Money.

If a Bill is drawn on B, and B. happens to be in the Country, and a Friend of his desires the party not to protest, and he will pay the same, it is good, and shall bind such party.

*Pinchard ver-  
sus Fowk,  
Styles, 416.*

If there be two joynt-Merchants or Partners, and

F f

one



*Pasch. 1654.* in one of them accepts a Bill of Exchange, the same shall  
 B. R. *Styles* bind the other; and an Action of the Case on the Cu-  
 370. stome may be maintained against him.

*London.*

XXX. Merchants generally allow 3. dayes after a Bill becomes due for the payment; and for non-payment within the 3. dayes protest is made, but is not sent away till the next Post after the time of payment is expired.

*Holland.*

If *Saturday* is the third day, no protest is made till *Munday*.

There are two Protests,

1. For non-acceptance, which is called intimation.
2. for non-payment.

\* Which is look'd upon to be the third day.

XXXI. The use of the Protest is this, That it signifies to the Drawer that the party upon whom he drew his Bill was unwilling, not to be found or insolvent, and to let him have a timely notice of the same, and to enable the party to recover against the Drawer,

For if one drawes a Bill from *France* upon a person in *England*, who accepts and fails, or becomes insolvent at the time of payment, if there be not a Protest and \* timely notice sent to the Drawer there, it will be difficult to recover the money.

In *Holland* they are not altogether so strict, yet there must be a reasonable time of notice; the reason is, for perhaps if he had reasonable and timely notice, the Drawer then might have had Effects or other means of his upon whom he drew, to reimburse himself the Bill; which since for want of timely notice he hath remitted or lost. And the general Rule is, That though the Drawer is bound to the Deliverer till the Bill is satisfied, yet it is with this proviso, that protest be made in due time, and a lawful and an ingenious diligence used for the obtaining payment of the Moneys; for it were unreasonable the Drawer should suffer thorough his neglect.

There is no danger, be the party never so responsible, to protest immediately if the money be not paid when it is due *i. e.* the third day; but there may (especially beyond Seas) be great hazard for want of protesting.

XXXII. Where a Merchant hath accepted, and before the same became due, he becomes insolvent, or at least his

his credit publicly blasted, a Protest ought to go; but then there is usually a demand made, which once coming, the Drawer is compellable to give better security; and if a second Bill comes if no protest, then Drawer and Security lye at stake.

*In leg. pro debito in fine c. de bonis author. Judi. possiden.*

XXXIII. If a Merchant drawes a Bill, and there is a Protest for non-payment; if another person hearing of the same declare, that he for the honour of the Drawer will pay the contents, and thereupon subscribes; he is obliged thereby: and in this case it has been practised, that the party that received the money hath put his name on the back-side of the Bill in blank; but the receipt is sometimes taken on the Protest, which together with the whole proceeding is turned into an act, and the same being drawn by the Notary, is remitted to the Drawer by him who gave honour to the Bill.

XXXIV. If a Bill be accepted, and the party dyes, yet there must be a demand made of his Executors or Administration; and in default or delay of payment, a Protest must be made: and although it may fall out that the Moneys may become due before there can be Administrators, or the Probate of the Will be granted; yet that is delay sufficient for a Protest in case of non-payment.

*14 dayes allowed from the death before Administration can be committed, unless there be a Will.*

But on the other hand, if the party be dead to whom the Moneys are made payable, and the Moneys are ready to be paid, and there is no person that can legally give a discharge; yet a protest ought not to go for non-payment: The reason is, because there is no person that hath any authority either in deed or in Law to make it, and a Notary ought not to make it; if he does, and the party hath received any prejudice thereby, an Action of the Case perhaps may lye against him for his pains: nor does it avail, that if security be offered to save him harmless against the Executors or Administrators, for that is an act left to his own discretion; for perhaps the security may not be lik'd: but whether good or bad, makes nothing as to oblige him in Law.

*But an Intimation ought to go, and that the Acceptor is willing to pay according to Order.*

But if a man is bound in a Bond to pay a sum of money

money to J.S. his Executors, Administrators, &c. and the Obligee dyes intestate the day before the sum becomes due, yet the Bond is not forfeited if not paid at the day, because there was no body to whom the Obligor could pay to save his Obligation: But as *Littleton* sayes, if it be to pay to J.S. generally, you must hunt him out all over the Kingdom, if you'll save the penalty.

XXXV. A man not found, or being found not met withal either at home or the *Exchange*, is cause sufficient for a protest; but in that there must be diligence used in the finding him.

A Bill returned protested for non-payment being once satisfied by the drawer to the deliverer, the drawer is discharged and so is the Acceptor to him to whom the Moneys were to be paid: but, the Acceptor by vertue of his acceptance makes himself a debtor *secundum consuetudinem Mercatoriam* to the drawer.

XXXVI. Moneys may be had on Exchange by way of Letters of Credit, the which are in two respects, the first general, the other especial.

The general Letter is open directed, *To all Merchants and others that shall furnish my Servant or Factor, or any other with such and such Moneys*; for repayment of which he binds himself to answer and pay all such Bills of Exchange as shall be drawn on him upon the receipt of the value, by his Servant, Factor or other person: If there be really Moneys advanced on this Letter of Credit and paid to the Factor, Servant or other, and Bills of Exchange are sent to the party that sent such Letter of Credit, and if he refuses to accept, yet according to the customes of Merchants he is bound to pay; the reason is, for there was no respect had to the ability of the taker up, but to him that gave his Letters of Credit: and therefore in such case if an Action at Law be brought, the particular custome as to that point must be carefully set forth.

The special Letters of Credit, where one writes a Letter to furnish another mans Factor or Agent; and there is in this the same remedy as above.

As

As Bills of Exchange seldome come without Letters of Advice, so ought they to be pursued: If a Bill shall express, *And put it to the account of A*; and the Letter of Advice sayes *B*; this must be protested against, for it cannot safely be paid; at least running the risque of an equitable Suit.

**XXXVII.** If one payes money on a Bill before it be due and the party breaks, it has been conceived that the party ought to answer the drawer: The reason hath been, because the drawer might have countermanded the same, or ordered the Bill to be made payable to another.

In *Italy* if Money is paid to a Banker's Servant, and if the Master subscribe, *Pagate com si dice*, this binds the Master as effectually as if he had subscribed it with his own hands.

**XXXVIII.** A Bill drawn by a Merchant in *London* payable by another person beyond Seas, such Bills in most Countreys are assignable over from Merchant to Merchant, and the last person may sue and recover the same upon an acceptance: But in *England* onely the first person mentioned in the Bill, and to whom the Money is made payable may recover. 'Tis true, such person to whom the Money is made payable, may for valuable consideration deliver this Bill to another person, and he may endorse an Order on the back-side; but if the party afterwards refuses payment of the same, it may be sued in the parties name to whom the same was transferred, laying the same by way of Custome.



## CHAP. XI.

Of Moneys advanced by way of Bottomerie,  
or Fœnus Nauticum.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. How Commerce is made equivalent to Natural Community.</p> <p>II. whether Money be fit onely to maintain the Trade and Credit of Vice.</p> <p>III. whether Abraham chose to acquire a Property by Money.</p> <p>IV. Of the natural and instrumental measure of the value of things.</p> <p>V. How Money is equal to all things.</p> <p>VI. Money is for buying, and hinders not but helps Permutation.</p> <p>VII. Money the Instrument of Charity and Sacrifices as well as our Necessities.</p> <p>VIII. Of the difference between Moneys advanced to be used in Commerce at Land, and that which is advanced at Sea.</p> <p>IX. Of Moneys advanced by way of Bottomerie when the Contract hath its inception.</p> | <p>X. Of Moneys sent on Shipboard, and the Vessel is wreckt, where the Lender shall bear share of the loss, and where not.</p> <p>XI. Of Moneys taken up by the Master, where the same shall oblige the Owners, and where not.</p> <p>XII. The derivation and institution of this sort of Loan, and for what causes.</p> <p>XIII. Of the several wayes of taking up of Moneys by way of Bottomerie, real and feigned.</p> <p>XIV. Moneys so advanced, whether gain ought to be bounded, or otherwise left to the will of the Lender.</p> <p>XV. Of Usura Maritima, how reasonable the same stands at this day.</p> <p>XVI. Of Monies advanced to a considerable profit called usufruit, being both honest and honourable.</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **M**oney is one of those things which they who want, want all other things but words to reproach their bad Fortune. But sometimes it is the policy even of Rags and Poverty it self to undervalue that which it cannot have, and to convert that which it hath (though never so mean) into an esteem; and then to lodge as much pride in a Tub, as *Alexander* could in a Pal-

a Palace, though it could not tempt him to a change of Condition.

*Nil habet infelix paupertas durius in se,  
Quam quod ridiculos homines facit*—

No wonder therefore, seeing Rich men will be obstinate to hold to their advantages, that deformed Poverty (which mixes with them in the same frame as a shadow to set off their Colours the better) would have the Rich to descend to them; and that instead of setting out Moneys by way of *Bottomery*, *Usury* and the like, they would not have any such thing as money at all, but would have all things reduced into a state as is afore mentioned.\*

\* *I. 1. Cap. 1.*

It cannot be denied, but that we all live by the natural or intrinsique value of things; but the way to come by them is by an Instrument of civil value, which is Money; instead of Community therefore we now have Commerce: which *Commercium* is nothing else but *Communio mercium*; but Communion must needs be by the means of another thing that may bear equal proportion on both sides, which is Money onely. But now let us hear and if possible satisfy the complaints that are made against it so impatiently.

S. 1, 2, 3.

Where there is great Luxury, there must be likewise great Industry to maintain it; and therefore the Industry of this Civil State, must be greater than that which is in the simple state of Nature: But what is there here too blame, seeing Industry no more than Plenty is in it self a Sin?

II. It is the Answer of Envy or Ignorance, *Prima peregrinos obscæna pecunia mores*—*intulit*—Money is that (say they) which maintains the Trade and Credit of Vice, if that were taken away, we should look after nothing but necessaries, which are virtuous; it makes too nice inequalities and distances, and is not significant enough in the best things: for all the Money in the World is not really worth one penny loaf, which is convertible into our Natures and Substances; it serves

\* Aristotle  
Polit.

† Campanella  
Monarch.  
Hist.

only to assure Fortune, but not Virtue, it is accepted as the measure of all things Natural, Moral, and Divine : for Honour is nothing but ancient Riches \*, and in Morals, *Virtus post nummos* ; This in Religion breeds that root of all Evil, Covetousness : for in a simple state of Nature necessary things must needs be spent within a short time, and the return of the Sun brings a new supply and a Treasure greater than the *Indies* ; Of which One † makes this Observation, That it was got in blood, sayles home in a Sea of blood, and never rests till it be laid out in blood. This was that which was made the Price of *Salvation*, even of the Blood of our Blessed Saviour, 30 Pieces for that which was worth Thirty thousand Worlds ; but in the Religion of the first times, *Nullo violatus Jupiter auro*, as *Juvenal* hath it.

And if this had not been brought into the World, we should not have so much to discount for at the day of Judgment. Why therefore should that which is condemned to the obscurity of the Earth, and lodg'd so near Hell, now be made the price of all that which is above the Earth, even a *Solo usq; Cælum* ? Or why should we be excluded from the Gifts of Nature, unless we have those of Fortune ? Is it not then more reasonable that Rich men lose this Instrument of Luxury, than the Poor should lose the necessary means of their subsistence ? This is the Plea which is made *in forma Pauperis, Et de ipsa paupertate.*

Most certain it is, that neither the stupid simplicity of the Woods, nor Poverty it self are any part of Virtue, and therefore are not reckoned Blessings, as Riches were to *Solomon*, (he who built Gods first Temple, and put his Religion in lustre) and as they likewise were to *Numa*, from whom Money was called *Nummus* : He likewise built the first Temple at *Rome*, and kindled first the Vestal fire, & *ferocem populum deorum metu mitigavit.*

III. We know how God conversed with *Abraham* who was the first that had Money, and made use of it to buy a Property : It is true, they with whom he inhabited called him a Prince, but that was no argument to him

him to disown their properties, but for the contrary, lest they should think that Dominion or a right to things was founded in grace.

IV. But to come more close to the Question, and to examine the reason and necessity of this measure; Money is like a Law or Government, which are all constituted by the same extream necessity; therefore the counterfeiting or attempting to destroy any of these by private means is every where Treason. Now this measure is two-fold, either Natural or Civil, or rather natural, and the Instrument which expresses the natural by equal Permutation: The natural measure is proportioned either by *Want*, or *Plenty*; In *Want* we consider whether the thing be useful or necessary; things which are necessary are best, but of least price; as a Loaf of Bread is more necessary, but infinitely cheaper than a Diamond. One man hath Cloathes, another man hath Leather; those two possibly have no need one of another, and therefore there will be no Permutation betwixt them; but if one had need of another, then he who were most prest, would come to the price of the other: And therefore *Want* or *Plenty* is the measure of estimating things, and is the bond of Society, whereby one man shews he is or may be useful to another; and Nature hath so ordered it, that no man is so Rich who hath not some need of the Poor; and no man is so mean and abject, but he may be some wayes useful to the Rich.

V. The Civil Measure or rather Instrument where- Money is like by the Natural expresses it self, is *Money*, which hath the middle but a feigned value, and therefore it is sometimes higher term of a Syl- and lower in esteem as men please; which could not be, logisme, of which it is if its value were natural which is unalterable. If I said, *Quo conveniunt in tertio conveniunt inter se.* have Cloath at such a price, and you have Wines at the same price, then we regarding the same price may make an equal Permutation: Or if I give to you so many pieces of Gold for your Cloath at the same price, the Sale is equal again, whether it be an inconvenience that † Poland and in some Countries † is sometimes at a higher value than generally in at another, is not a consideration of this Discourse; for most of those Northern the Countries.



the price of things themselves change more than any Money doth daily.

V I. *Money* is an invention onely for the more expedite Permutation of things; but it doth not follow that men may not make any Permutations but by Money, even as well now as if we were in our natural state; if they who digg now in waste Hills had their Harvest of their Beans well gathered in, but had need of Wine for the Stomachs sake, or of Druggs for healths sake, if the Vintner, or Apothecary have no need of Beans; what use will they make of the natuaal value of their Beans without Money? Or if need be, what would they do till their Beans are gathered? Money therefore hinders not Permutation and Commerce of natural things, but assists them; nay, it is therefore an Instrument of Instruments: for he who hath Money may buy things which he need not use but sell, thereby to get other things afterwards for his use. There is no Nation or People so barbarous, but have Money or a publique Instrument of Permutation either in Metals or Fish-bones, &c. for it imports not so much of what matter it is, provided it be durable, not counterfeitable, and difficult to come by.

*Vide* Chap. of  
Exchange,  
§. 1.

V II. Take away this fungible Instrument from the service of our necessities, and how shall we exercise our Charity, which is a branch of Religion and Justice, as well as of humanity? He who goes to Church passeth as it were thorough two Temples, the Poor at the Porch, and the Temple it self: and the giving at the Porch is called Sacrifice, Offering and Gift, as well as that at the Altar. God would be sacrificed to onely in one Town of the World, *Jerusalem*: But could that have been, if *Money* and *Money-changers* had not been allowed? How could they who came from such remote places have by any other means brought their Oxen, Calves, Goats and Doves to the Altar? If there were nothing further to shew, but that one piece, which our Saviour himself coyned miraculously in the mouth of a Fish, it were Argument sufficient that the use

of Money may be both good, just, and necessary.

VIII. Things being thus stated, and that Money is both good, just and necessary, it will be demanded loudly, That admitting a reasonable advantage may be made by way of Usury, *quo jure* it is that an advantage upon the same more than what the Law allowes, is taken?

The distinction is great between Moneys lent to be used in Commerce at Land, and that which is advanced to Sea. In the first, the Lawes of the Realm have set marks to govern the same, whereby the Avaritious mind is limited to a reasonable profit; The reason of that is, because the Lender runs none, but the borrower all the hazard whatever that money brings forth. But money lent to Sea, or that which is called *pecunia* † *tra-* † *Leg. Fen.*  
*jectitia*, there the same is advanced on the hazard of the Lender, to carry (as is supposed) over Sea, so that if the Ship perishes, or a spoliation of all happens, the Lender shares in the loss without any hopes of ever receiving his Moneys; and therefore is called sometimes *usura Maritima*, as well as *Fœnus Nauticum*; the advantage accruing to the Owners from their Money, arising not from the loan, but from the hazard, which the Lender runs; the which is commonly reduced to a time certain, or one or more Voyages, according to their several and respective agreements.

*Leg. 3. D. de Naut. fen. l. 1. eod. l. 62. D. de rei Vindic. Locinius, lib. 2. Cap. 4. S. 2.*

† *Leg. Fen. Naut. leg. periculi eod.*

IX. If the Bonds be sealed and the money is advanced, if the Ship happens to miscarry by Storm, Fire, Enemy, or any otherwise before the Voyage begun, then the borrower runs the Risque, unless it be otherwise provided generally, as that if such a Ship shall not arrive at such a place at such a time, &c. there the Contract hath its inception from the sealing; but if the Condition be, That if such a Ship shall sayl from London to Amsterdam, and shall not arrive there, &c. then, &c. There the contingency begins not till the departure. Yet it has been conceived, That if the Matter takes up Money accordingly and buyes in a lawful Lading, but will happen to

*Vide Passim ad leg. de Fen. Naut. & DD. leg. Naval. Rhod.*

*Vide leg. 3. c.  
de Fen. Naut.*

to endeavour to defraud the Prince or State of their Customes, and puts such Goods aboard by means whereof he has incurred a forfeiture of his Ship; in such case the Lender is not obliged to such Hazard.

*Lig. Naval.  
Art. 17.*

X. If money be lent on Shipboard by a Merchant *super Cargoe* or a passenger, and before the day of payment the Ship happens to be wreckt or cast away; if there be such a Saver as will admit a Contribution, then the party is not to have his whole money, but is to come into the Averldge: but if the time of payment were past before the misfortune happened, then the Lender must be repaid his whole Money free from Contribution.

Art. 18.

And therefore by the Laws Maritime, if the borrower detains any such lent Moneys beyond the term appointed for the repaying, he shall at his return not only pay the profit agreed on before the Voyage, but also augment the same according to the time that hath accrued since the day of payment.

\* *Testatur Vi-  
nius in Peckium  
ad. I.L.Nautic.  
quem vide pag.  
95.*

*Leg. Oleron,  
Cap. 1.  
Leg. 4. D. de  
Naut. fen. l. 1.  
C. eod. leg. qui  
Romæ S. Calli-  
machus de verb.  
obl. & ibi  
Gothfr. &  
alios.*

*Scarborough  
and Lyrius,  
Pasch. 3 Car.  
in B. R. Rott.  
213. Noy 95.*

XI. A Master of a Ship hath no power to take up Money by *Bottomrie*, in places where his Owner or Owners dwell, unless it were for so much only as his part cometh unto in the said Ship: otherwise he \*and his Estate must stand liable to answer the same. But when a Master is out of the Countrey, and where he hath no Owners, nor any Goods of theirs nor of his own, and cannot find means to take up by Exchange or otherwise, and that for want of money the Voyage might be retarded or overthrown, Moneys may be taken up upon *Bottomrie*, and all the Owners are liable thereunto; otherwise he shall bear the loss, that is, the Owners are liable by their Vessel, though the money is not so employed in truth; and the Owners have their remedy against him who they put in trust: but the persons of the Owners are no wayes made lyable by the act of the Master for moneys taken up.

If Owners agree not in setting out the Ship, most voices shall carry it, and then money may be taken up for

for their part by *Bottomerie*, or *Fœnus Nauticum*, or by *Hypothicating* such a proportion of the Ship.

Many Masters of Ships having Ensured or taken up Moneys upon *Bottomerie* to greater Sums of Money than the value of their Adventure, do wilfully cast away, burn or otherwise destroy the Ships under their charge, the same was made Felony, and the person or person so wilfully doing or procuring the same to be done, were to suffer death.

16 Car. cap. 6.  
A good Law,  
and ought to  
be encoura-  
ged; It's pity  
it was not  
continued.

XII. The signification of this *Fœnus Nauticum*, is by the Dutch called *Bomerie*, *Bodmerie*, *Bodemerie*, *Bodemerij*; so variously pronounced from the Keel \* or bottom of the Ship upon the parallel, whereof the Rudder of a Ship doth Govern and direct the same, *parte pro toto sumpta, ita primum appellata, cum etiam Lingua Gallorum antiqua & Britanica Bodo vel Bodun fundum aut profundum signet † in quem navis fundum, vel ipsam navem ejusq; usum mutuo accepta est pecunia, sed postea latius pro fœnore nautico etiam usurpari capit.* And the Money so taken up by the Master is done upon great extremity, and that for the compleating of the Voyage when they are in distress and want in some Foreign parts; and indeed such taking up is indeed in the nature of Mortgaging the Ship, for *le Neife oblige al payment de ceo, &c.* And in the Instrument there is a Clause that expresses that the Ship is engaged for the performance of the same.

\* Job. Losinij,  
l. 2. Cap. 4. §. 1.  
Latches Rep.  
fo. 252. Scar-  
borough's case.

† Teste Camdeno  
in Britannia,  
p. m. 149.

Locinij lib. 2.  
Cap. 4. §. 1.

Moneys that are advanced are upon two Securities, the one is on the bare Ship, the other upon the person of the Borrower, sometimes upon both: The first is where a man takes up Moneys and obliges himself, that if such a Ship shall arrive at such a Port, then to repay (perhaps) double the sum lent; but if the Ship happens to miscarry, then nothing.

XIII. So likewise some will take up Moneys, the condition reciting, Whereas there is such a Ship, naming her, bound to *Amsterdam*, whereas such a man is Master, (whereas indeed there is no such Ship or Master in nature)



*Toto tit. Dig. &  
Cod. de Naut.  
fen. & Docto-  
rum sic hards  
in tit. Cod. de  
Naut. fen. 1. 4.*

*Trajectitia pe-  
cunia propter  
periculum cre-  
ditoris quam-  
diu navigat  
navis, infinitas  
usuras capere  
potest; upon  
which Law  
it was ob-  
served by  
Anianus, Quia  
Maris periculo  
committitur  
quantas conve-  
nerit usuras  
hanc pecuniam  
dare Creditor  
potest.*

*Verum enim  
vero hic pro-  
prie non versari*

*damnatum fenus sed compensationem aliquam periculi, quod creditor contra naturam  
mutui in se recepit patrim. Johannes Locinius, lib. 2. Cap. 4. §. 1. & 2.*

\* Trin. 6 Jac. in B.R. 2. Cro. 258. Sharpley versus Harrold.

ture) that if that Ship shall not arrive at such a place within 12 months, the money agreed on to be paid shall be paid; but if the Ship shall arrive, then nothing. The first of these is honourable and just according to the laudable practice among Maritime persons; and though the advantage runs high, as 20, 30, nay sometimes 40 *per Cent.* without consideration of time; for the Moneyes are to be paid within so many dayes after the Ships safe arrival; yet in regard the Adventure is born by the Lender, (for if the Ship perishes, the advancer loses) the Lawes and Practice of all Maritime Countries allow of the same. And therefore by the *Common Law*, if an Action of Debt be brought on such an Instrument, the Defendant cannot plead the *Statute of Usury*. And so it was adjudged where one *Sharpley* had brought an Action of Debt on a Bond for Moneyes taken up upon *Bottomery*; The Defendant pleads the *Statute of Usury*, and shewed, that a certain Ship called the *made a Voyage to Fish in New-  
found Land* (which Journey might be performed in eight months) and the Plaintiff delivered 50 l. to the Defendant to pay 60 l. at the return of the Ship to *D*, and if the said Ship by Leakage or Tempest should not return from *Newfound-Land* to *D*, then the Defendant should pay the principal money; and if the Ship never returned, then nothing to be paid. Upon \* *Demurrer* it was adjudged the same was not *Usury*: for if the Ship had stayed at *Newfound-Land* 2. or 3. years, yet at her return but 60 l. was to be paid, and if she never returned, then nothing.

The other advance which is upon a fictitious supposition of a Ship and Master, where indeed there is no such in Nature, is more unconscionable, the same being the common practice that's used amongst the *Italians*, and now on this side the Water: The same is as

to internal Right unjust, and cannot now be determined, since it was not long since adjudged \* that such \* C. B. Hill. Contract was good, according to the *Common Law* 22, 23 Car. 2. of this Realm, and that on a Special Verdict.

XIV. Most certain it is, that the greater the danger is, if there be a real adventure, the greater may the profit be of the Moneys advanced: \* And so hath the same been the Opinion of Civilians, and likewise some Divines; though some seem to be of opinion, That any profit or advantage ought to be made of Moneys so lent, no more than of those that are advanced on simple loan, and on the peril of the borrower. However, all or most of the Trading Nations of Christendome do at this day allow of the same, as a matter most reasonable, by reason of the contingency or hazard that the Lender runs; and therefore such Moneys may be advanced several ways, and a profit may arise so that there runs a peril on the Lender.

*Cl. Salmasius, cap. 9. de modo*

*usur. fo. 380. 188. 218. Trajectitia pecunia propter periculum creditoris, quamdiu navigat navis, infinitas usuras capere potest. Upon which place Anianus observes, Quia maris periculo committitur in quantas convenerit usuras hanc pecuniam dare Creditor potest. Vide Novel. Const. 106. 110.*

There is likewise a second way of advancing of Moneys called *Usura Maritima*, joyning the advanced moneys and the danger of the Sea together; And this is obliging sometimes upon the Borrower's Ship, Goods and Person: The produce of which by agreement will advance sometimes 20, 30, and sometimes 40. *per Cent.* As for Instance, A private Gentleman has 1000 l. ready money lying by him, and he has notice of an Ingenious Merchant that has good Credit beyond Seas, and understands his business fully, applies himself to him, and offers him 1000 l. to be laid out in such Commodities as the Merchant shall think convenient for that Port or Countrey the Borrower designs for, and that he will bear the adventure of that Money during all that Voyage; (which he knowes may be accomplished within a year) hereupon the Contract is agreed upon, 6 *per Cent.*

*usura legitima  
ejus qui tra-  
jectitiam pecu-  
niam trans  
mare vehendam  
generatur, id  
est cum periculo  
suo, centesima  
est.*

*Cent.* is accounted for the Interest, and 12 *per Cent.* for the Adventure outwards, and 12 *per Cent.* for the goods homeward; so that upon the return the Lender receives 30 *per Cent.* which amounts to 1300 l. The Lender in this case hath a good bargain, no question. Now let us see what advantage the Borrower hath.

1. The Borrower prevents the taking up the like Sum at Interest which comes to 6. *per Cent.* and Bro- cage which comes now in this Age thorough the gene- rosity of the Merchant, and Covetousness of the Scrive- ner, at 1. or 2. *per Cent.* more; and then the same is let out but for 6. months, and then the Scrivener in- evitably at the 6. months end sends his Note, that his Friend expects his Moneys to be yaid in; so that to stop that gapp there must be Continuation, which is at least one *per Cent.* more, besides the obliging of Friends in Securities.

2. The *Assurance* prevented, which perhaps may come to between 5 and 20 *per Cent.* according as the Times are; and common prudence will never suffer a Mer- chant to venture 2. parts of 3. parts of his Estate in one Bottom without assuring.

3. As he shall not have occasion to Ensure, so it may be a great occasion of preventing the common Ob- ligation of his Ensuring of others; the which in a gene- rous Merchant in honour cannot be denied, the *Premio* running pretty reasonable.

4. It prevents the parties running the Risque and danger of the Seas, Enemies, or any other fatal loss, and hath been a means to introduce a mans credit in a short time at lesser charge, if not to put him in in a Con- dition not to be beholding to such a fair, though charge- able means.

And this cannot be *Usury* by the Lawes of this Realm, for the Risque and Danger that the Lender runs.

XVI. There

VI. There is also another way, but that is both Honest and Honourable, called *Usufruite*, that is a Stock in a Company or Society which is perpetual; such a Stock or Portion may be purchas'd, that is, the advantage or benefit arising by the improvement of the same. In the East-India, and in some other Companies;

As for Instance, The *East-India* Company hath a Stock lodged in their hands by divers persons, which they in the most prudent'st manner as they see fit, imploy to those places as they judge most proper; if a return is made, the advantage of that is distributed to each person that is any way entitled to that Stock: which advantage is called a *Divident*, and perhaps may afford some years 20 or 30 *per Cent.*: But on the other hand; if that that proportion of the Stock which goes out happens to miscarry, the abatement is proportionable, and so the Stock may be lessened, unless that they will stay the *Dividents* to keep the Stock; the which they may do, For it is a Trust reposed of so many mens Moneys in their hands, to yield them such advantage as they shall upon a just account set out: So that if a man hath a 1000 l. Stock, he cannot take the same out of the Great Stock whereby to lessen the same, but he may transfer that *usu-fruite* by that Customary way which they have to any other person, for a valuable consideration *in finitum*. Such a Stock of 100 l. in the *East-India* Company in time of Warr might have been purchas'd for 80 l. *Nett*; but now in time of Peace scarce got under 170; or 180 l. the *Dividents* running high.

*Pindfold versus Northee, Pasch. 27 Car. 2. in B.R. adjudged there on a Special Verdict.*



## CHAP. XII.

## Of Impositions called Great Customes, Petty Customes, and Subsidies.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Impositions, whether they may be commanded without the Three Estates, and of Magna Charta touching the same.</p> <p>II. Of Impositions made voluntary by consent of Merchants, and of the adnull of the same.</p> <p>III. Of the Confirmation of the Great Charter for free Traffique; and of the Settlement now made on his Majesty of the same.</p> <p>IV. Of the Immunities formerly of the Hanſiaticque Towns here in England, and when determined.</p> <p>V. Of the Antiquity of Customers or Publicans as well in former</p> | <p><i>Ages as at this present time, in most Nations.</i></p> <p>VI. Of the Imposition called Magna Custuma.</p> <p>VII. Of that which is called Parva Custuma payable by strangers, and the Act called commonly Carta Mercatoria.</p> <p>VIII. Of Subsidy, and of what, and the Rates how set.</p> <p>IX. Of Subsidy by Strangers on wines.</p> <p>X. Of Goods not rated how to pay.</p> <p>XI. Of the Subsidy-Duty for Cloaths.</p> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **T**Hat Impositions neither in the time of Warr or other the greatest necessity or occasion that may be, (much less in the time of Peace) neither upon Forraign nor Inland Commodities of what nature soever, be they never so superfluous or unnecessary, neither upon Merchants Strangers nor Denizens may be laid by the King's absolute Power without Assent of Parliament, be it never so short a time.

By the Statute of Magna Charta, Cap. 30. the words are, *All Merchants if they were not openly prohibited before shall have their safe and sure Conducts, to enter and depart, to go and tarry in the Realm, as well by Land as by Water, to buy and sell without any Evil Tolls, by the Old and Rightful Customes (except in the time of Warr); and if they be of the Land making Warr against Us, and be found in Our Realm at the beginning of the Warr, they shall be*  
attached

attached without harm of Body or Goods, untill it be known to Us or Our Justices how our Merchants be intreated there in the Land making Warr against Us. The Statute of which this is a branch, is the most ancient<sup>st</sup> Statute Law we have, won and sealed with the Blood of our Ancestors, and so revered in former times, that it hath been 29 times solemnly confirmed in Parliament.

II. *Impositions* were in some sort done *Consensu Mercatorum*, by Edward the First, and Edward the Third: And again in Henry the Eighth, of which the House of Burgundy complained, as against the Treaty of Enter-  
Rott. Almain.  
3 Ed. 3. Rott.  
Rott. Claus.  
29 Ed. 1. Ek-  
tract Bruxelles:

King Henry the Third finding that such a *Modus* of Imposition tended to the destruction of Trade, and apparent overthrow of Commerce; and was against the Great Charter, made Proclamation Anno 16. in all Ports of England, That all Merchants might come *faciendo rectas & debitas consuetudines nec sibi timeant de malis tollis*, for that such Impositions had no better name then *Maletolls*.  
Dors. Claus. de.  
16 Hen. 3. n. 20:

The like was declared and done by Edward the First in the 25th year of his Reign, and Edward the Second, in the 11th and 12th years of his Reign.  
Rott. Claus.  
11 Ed. 2.

III. In 2 Ed. 3. the Great Charter for Free Traffique was Confirmed; and about some 3. years after there were Commissions granted for the raising of a new kind of Tallage, but the people complained; whereupon the Commissions were repealed, and he promised never to assess any but as in the time of his Ancestors.  
12 Ed. 3.  
Memb. 22. in-  
dors. Rott. Al-  
maine.

But this Prerogative Power of Imposing inward and outward upon Commodities over and above the ancient Custome of Subsidy without a free consent in Parliament, is now ceast and settled; And that Question which for many Ages had been handled by the most Learned<sup>st</sup> of their times, in the asserting and in the denying, will never more be remembered: Which being managed for some time was afterward farmed out: The Parliament having justly, honourably and voluntarily humbly presented such and many more who are established on his Majesty according to their several limitations.

*Class. Anno*  
5 Ed. 3.

*Original.*  
17 Ed. 3. Rott.  
2.

*Vide the great*  
*Cafe in Mich.*  
4 Jac. in the  
*Exchequer*  
*versus Bates.*  
*Lane Rep.*  
fo. 22.

like having been done by former Kings, as did *Edward* the Third with the New and Old Customes of *London* for 1000 Marks monthly to be paid unto the Ward-  
rope.

*Richard* the Second, *Anno* 20. Farmed out the Subsidy of Cloth in divers Counties.

So *Edward* the 4th, *Henry* the 8th, *Queen Elizabeth*, and King *James*; the same having been used in former Ages even in the best govern'd State, *Rome*, which let out Portions and Decim's to the *Publicans*.

IV. The Old *Hanse Towns*, viz. *Lubeck*, *Collen*, *Brunswick*, *Dantzick* and the rest, had extraordinary Immunities granted unto them by our Third *Henry*, for their great assistance and furnishing him in his Warrs and Naval Expeditions with so many Ships; and as they pretended the King was not onely to pay them for the Service of their Ships, but for the Vessels themselves in case they miscarried: The King having concluded a Peace, and they being on their return home for *Germany*, the most considerable part of their Fleet miscarried by Storm and stress of weather; for which according to Covenant they demanded reparation: The good King in lieu of that which he wanted, *Money*, granted them divers Immunities; and amongst others, they were to pay but 1. *per Cent.* Custom, which continued till *Queen Mary's* time, and by the Advice of King *Philip* she enhanced the 1. to 20 *per Cent*: The *Hans* not only complained, but clamoured aloud for breach of their Ancient Priviledges confirmed unto them by long Prescription from 13 successive Kings of *England*, and the which they pretended to have purchased with their Money: King *Philip* undertook to accommodate the business, but *Queen Mary* dying, and he retiring, nothing was effected. Complaints being afterwards made to *Queen Elizabeth*, she answer'd, *That as she would not innovate any thing, so she would protect them still in the Immunities and Condition she found them.* Hereupon their Navigation and Traffique was suspended a while, which proved very advantageous to the *English*, for they tryed  
what

what they could do themselves herein, their adventures and returns proving successful, they took the whole Trade into their own hands, and so divided themselves to Staplers and Merchant-adventurers; the one residing constant at one place, the other keeping their course and adventuring to other Towns and States abroad with Cloth and other Manufactures: This so nettled the *Hans*, that they devised all the wayes that a discontented people could to draw upon our new *Staplers* or *Adventurers* the ill opinion of othhr Nations and States: but that proving but of too small a force to stop the Current of so strong a Trade as they had got footing into, they resorted to some other; whereupon they applyed themselves to the Emperour, as being a Body incorporated to the Empire; and upon complaint obtained Ambassadors to the Queen to mediate the business: but they returned still *re infecta*: Hereupon the Queen caused a Proclamation to be published, *That the Merchants of the Hans should be intreated, and used as all other Strangers within her Dominions in point of Commerce, without any mark of distinction.*

This enflamed the more, thereupon they bent their Forces more eagerly, and in an Imperial Dyet at *Ratsbone* they procured that the *English* Merchants who had associated themselves in Corporations both in *Embsden* and other places should be adjudged *Monopolists*; whereupon there was a Comitial Edict procured against them that they should be exterminated, and banished out of all parts of the Empire; which was done by *Suderman* a great Civilian. There was there at that time for the Queen as nimble a man as *Suderman*, and he had the Chancellor of *Embsden* to second him, yet they could not stop the Edict, whereby our new erected Society of Adventurers were pronounced a Monopoly: Yet *Gilpin* played his Cards so well, that he prevailed the *Imperial Ban* should not be published till after the Dyet; and that in the interim his Imperial Majesty should send an Ambassador to *England* to advertise the Queen of such proceedings against her Merchants. But



this made so little impression on the Queen, that the *Hans* grew rather ridiculous than formidable, for the Town of *Emden* harboured our Merchants notwithstanding, and afterwards the Town of *Stode*; but the *Hansatiques* pursuing their revenge, and they being not so able to protect them against the Imperial Ban, removed and settled themselves in *Hamburg*.

This Politique Princess in recompence of their revenge commanded another Proclamation to be published, That the *Hansatique* Merchants should be allowed to Trade into *England* upon the same Conditions as they formerly did, Provided the English Merchants might have the same Priviledges to reside and Trade peaceably in *Stode* or *Hamburg*; or any where else within the Precincts of the *Hans*. This so incensed and nettled them, That all endeavours were made to cut off *Stode* and *Hamburg* from being Members of the *Hans*, or of the Empire: But the Design was suspended till they saw the Success of 88, King *Philip* having promised to do them some good Offices in the Concern.

But the Queen finding that the *Hans* were not contented with that Equality she had offered to make betwixt them and her own Subjects, but were using such extraordinary means; put forth another Proclamation, That they should transport neither Corn, Victuals, Arms, Timber, Masts, Cables, Metals, or any other Materials or Men to *Spain*, or *Portugal*. And not long after the Queen growing more redoubled and Famous by the Overthrow of King *Philip's* Invincible Armada, (as the Pope christned it) the *Hans* began to despair of doing any good, especially they having about some 60 Sayl of their Ships taken about the River *Lisbon* by her Majesties Frigats, that were laden with *Ropas de contrabanda*. She notwithstanding had thoughts of discharging this Fleet by endeavouring a reconciliation of the differences: but she having intelligence of an Extraordinary Assembly at *Lubeck* which had purposefully met to consult of means to be revenged of her, she thereupon

thereupon made absolute prize of those 60 Sayl, onely two were freed to carry home the sad Tydings of their Brethrens misfortune. Hereupon the *Pole* sent a ranting Embassador in the behalf of the *Hans*, who spake the Injuries done to the *Hans* in a high tone. But the Queen her self suddainly answered him in a higher, with a satisfaction no greater than what she had done to others of the like quality before.

This fortunate Clashing for the 19. *per Cent.* on the Customes, has proved ever since advantageous for *England*, our Merchants have ever since beaten a peaceful and an uninterrupted Trade into *Higb* and *Low Germany*; and by their constant Trade in those Parts have found a way thorough the *White Sea* to *Arch-Angel* and *Mosco*. The return of all which hath since vastly increased the *Riches* and *Strength* of this Nation.

V. After the *Jewes* became Tributary to *Rome*, (which was acquir'd by *Pompey* Threescore years before the Birth of our Saviour) certain Officers or Commissioners were appointed by the *Romans* in all those places where their Victorious Standards had claymed a Conquest, who used to appoint such Officers or Commissioners to Collect and gather up such Customemoney or Tribute as was exacted by the Senate. Those that gathered up these Publique payments were termed *Publicani* *Publicanes*, and by reason of their Cruel and Oppressive Exaction, they became hateful in all Nations.

*Joseph. locutus]*  
*de Pompeio,*  
*lib. 1. de Bello*  
*Jud. cap. 5.*  
*pag. 720.*

*Sigon. de Antiq. Juris Civium*  
*Rom. lib. 2.*  
*Cap. 4.*

Every Province had his several Society or Company of Publicans; Every Society his distinct Governour: in which respect it is that *Zaccheus* is called by the Evangelists, *Princeps Publicanorum*, the chief Receiver of the Tribute, or chief Publican: And all the Provincial Governours in these several Societies had one chief Master or Superintendant residing at *Rome*, unto whom the other subordinate Governours gave up their Accounts. These Publicans were hated of all the

*Luke 13. 2.*

*Is. Canſabon,*  
*Exercit. 3. 37.*

*Suton, in Flav.*  
*Vesp. c. 1.*

*Tertullian*  
*(Printed*  
*1609.) de pu-*  
*dici. Cap. 9.*

Roman Provinces, but especially of the *Jewes*, because though it was chiefly maintained by the *Galileans*, yet it was generally inclined unto by the *Jewes*, That Tribute ought not to be paid by them. This Hatred is confirmed by the Rabbinical Proverb, *Take not a Wife out of that Family wherein there is a Publican, for such are all Publicans.* Yea, a Faithful Publican was so rare at Rome it self, that one *Sabinus* for his honest managing of that Office, in an Honourable remembrance thereof had certain Images with this Inscription, *Καλῶς τελωνήσαντι, For the Faithful Publican.* No marvel that in Holy Writ Publicans and Sinners go hand in hand.

But now the World has been so long used to them, that in all or most Nations the particular Princes or States chuse out the most Sagest and Prudent'st men for that Employment: And certainly the Customes of this Realm never did return to that great and clear Account as they have done under the Care and Prudent management of the present Commissioners: And were *Tertullian* alive, he would have Recanted that Opinion of his, *That none would be a Publican but a Heathen.*

VI. Customes are Duties certain and perpetual payable to the King as the Inheritance of his Crown, for Merchandizes transported from and beyond the Seas from one Realm to another. *Magna Custuma & antiqua* is payable out of Native Commodities, *scilicet*, Wooll, Woollfels and Hides, and that is certain imposed.

And this Custome which is called *Magna Custuma*, is due to the King of Common Right for Four Causes:

1. For leave to depart the Kingdome, and to carry Commodities of the Realm out of it.
2. For the Interest and Dominion which the King hath in the Sea, and the Arms thereof.
3. Because

3. Because the King is the Guardian of all the Ports within the Realm, & *Custos totius Regni*.

4. For Whaftage and Protection of Merchants upon the Seas against the Enemies of the Realm and Pyrats.

VII. The Custome which is called *Parva Custuma*, is a Custome or Duty payable by Merchants Strangers, and begun in the time of King *Edward the First*, <sup>1 Eliz. Dyw</sup> when they granted him, that they would pay to him <sup>165.</sup> and his Heirs 3 *d.* in the pound for all Merchandizes Exported and Imported by them, &c. And that the Charter was and may be of great Use, I have here inserted the same, as it was Faithfully Transcribed out of the Roll in the *Tower*.

---

Pro

---



*For Merchant Strangers  
concerning Liberties  
granted to them.*

*Pro Mercatoribus Alie-  
nigenis de Libertati-  
bus eis concessis.*

31 Ed. 1.  
num 44.  
intus.

**T**HE KING, to his Archbishops, &c. sendeth Greeting. Concerning the good Condition of all the Merchants of the Kingdoms, Lands, and Provinces underwritten: That is to say, *Germany, France, Spain, Portugal, Navarr, Lombardy, Tuscany, Provence, Cathalonia*; Our Dukedoms of *Aquitain, Tholous, Turein, Flanders, Brabant*, and all other Lands, and forrein places, by what name soever called, coming into Our Kingdome of *England*, and there remaining.

We being very solicitous, out of Our especial Care, that under Our Dominion, a freedom of Tranquility, and full Security for the said Merchants may be provided for the future, so as they may the more readily apply themselves

**R**EX, Archiepis. &c. Salutem. Circa bonum statum omnium Mercatorum subscriptorum Regnorum, Terrarum, & Provinciarum, videlicet, *Alemann. Franciæ, Ispaniæ, Portugaliæ, Navarr. Lumbardiæ, Tuscæ, Provinciæ, Catholoniz, Ducatus nostri Aquitann. Tholosan Tatureini Flandr. Brebant. & omnium aliarum terrarum, & locorum extraneorum quocunque nomine censeantur, venientium in Regnum nostrum Angliæ & ibidem conversantium.*

Nos precipua cura sollicitat, qualiter sub nostro dominio tranquillitatis, & plene securitatis immunitas eisdem Mercatoribus futuris temporibus preparetur: ut itaque vota ipsorum reddantur ad nostra, & Regni nostri Servicia promp-

promptiora; ipsorum  
Petitionibus favorabi-  
liter annuentes, & pro  
statu eorundem plenius  
asscurando, in forma  
que sequitur ordinan-  
tes subscripta, dictis  
Mercatoribus pro ne-  
bis, & heredibus nostris  
in perpetuum duximus  
concedenda.

Imprimis, Videlicet,  
quod omnes Mercato-  
res dictorum Regnorum  
& terrarum salvo, & se-  
cure sub tuitione & pro-  
tectione nostra in dictum  
Regnum nostrum An-  
glie, & ubiq; infra po-  
testatem nostram alibi  
versant cum Merchan-  
dis suis quibuscunque,  
de Muragio, Pontagio,  
& Pavagio, liberi & qui-  
eti: quodque infra idem  
Regnum & Potestatem  
nostram, in Civitatib;,  
Burgis & Villis, Mer-  
catoris possint mercari,  
duntaxit in grosso, tam  
cum Indigenis, seu  
Incolis ejusdem Reg-  
ni, & potestatis nostre  
predicte, quam cum A-  
lieienigenis extraneis

to the service of Us, and  
of Our Kingdome, We  
graciously answering  
their Petitions, and or-  
daining more amply for  
securing their Condi-  
tion in form following  
underwritten, are plea-  
sed to grant to the said  
Merchants for Us and  
Our Heirs for ever.

*Imprimis*, That is to  
say, That all Merchants  
of the said Kingdomes,  
and Lands, may come  
from any other place,  
safe and secure under  
Our Tuition and Pro-  
tection into Our said  
Kingdome of *England*,  
and every where with-  
in Our Dominion, with  
their Merchandizes of  
what sort soever, and be  
unmolested, and quiet  
concerning (a) Murage, (a) Repair-  
(b) Pontage, and (c) Pa- ing publick  
vage, and that within walls.  
Our said Kingdom, and (b) Brid-  
ges.  
Dominion, they may (c) Pav-  
ments.  
Traffique in the Cities,  
Boroughs and Market  
Towns, onely in gross,  
as well with Natives, or  
Inhabitants of this Our  
King-

Kingdom and Dominion aforeſaid, as with Strangers Forreign and Domeſtick; But ſo, as their Wares vulgarly called Mercery or the *SPECIES thereof*, they may ſell by retail, as formerly hath been accuſtomed. And that all the ſaid Merchants may carry, or cauſe to be carried whither they pleaſe, their Merchandize which they have brought into Our ſaid Kingdom, and Dominion, or otherwiſe acquired, Except to the Lands of the manifeſt and notorious Enemies of Our Kingdom, paying the Customs which ſhall be due, Wines onely excepted, which ſhall not be exported out of Our ſaid Kingdom, or Dominion, after they have been Imported into Our ſaid Kingdom, or Dominion, without Pleaſure and ſpecial Licence, by any way or means whatſoever.

vel privatis. Ita tamen quod *Merces* que vulgariter *Merceria*, vocantur ac *Species*, minaciatim vendi poſſint, prout antea fieri conſuevit: Et quod omnes predicti *Mercatores* *Merchandisas* ſuas quas ipſos ad predictum Regnum & Potestatem noſtram adducere, ſeu infra idem Regnum & Potestatem noſtram emere, vel alias acquirere contigerit; poſſint quo voluerint, tam infra Regnum & Potestatem noſtram predictam, quam extra ducere, ſeu portare facere, præterquam ad terras manifeſtorum, & notiorum hoſtium Regni noſtri, ſolvendo conſuetudines quas debebunt, Vinis duntaxit exceptis, que de eodem Regno, ſeu potestate noſtra, poſtquam infra idem Regnum, ſeu Potestatem noſtram ducta fuerint, ſine voluntate noſtra & licentia ſpeciali, non liceat eis educere quoquo modo. Item,

Item, quod predicti Mercatores, in Civitatibus, Burgis predictis pro voluntate sua hospitari valeant, & moat Villis rari cum bonis suis, ad gratum ipsorum quorum fuerint hospitia sive domus.

Item, quod quilibet Contractus per ipsos Mercatores cum quibuscunque personis, undecumque fuerint, super quocumque genere Merchandisæ, initus, firmus sit & stabilis; ita quod neuter Mercatorum ab illo Contractu possit discedere, vel resilere, postquam denarius Dei inter principales personas contrahentes, datus fuerit & receptus. Et si forsan super contractu huiusmodi contentio oria-  
tur, fiat inde probatio aut Inquisitio secundum usum, & consuetudines feriarum, & villarum ubi dictum contractum fieri contigerit, & infra.

Item, Promittimus prefatis Mercatoribus pro nobis, & heredibus nostris, in perpetuum concedentes, quod nullam prisam vel arrestationem, seu dilationem occasione prisæ de cæ-

Item, That the said Merchants may lodge in the Cities, Boroughs, & Towns aforesaid; at their own pleasure, and there stay with their Goods, to the content of them who entertain them.

Item, That every Contract made by the said Merchants with what persons soever, and from what places soever, for what kind of Merchandizes soever, shall be firm and stable, so that neither of the Merchants shall depart from, or go back from his bargain, after a *Gods-penny* is given and received, between the principal persons contracting; and if it happen that a Contention arise on the said Contract, there shall be a Tryal, or Inquisition, according to the Usages and Customs of the Fairs, and Towns where such contract shall be made or begun.

Item, We promise to the aforesaid Merchants, and for Us, and Our Heirs for ever grant, That We by no meanes whatsoever will make, nor suffer to be made any Prize, or Arrest, or detention



tention by occasion of Prise, for the future, upon their said Wares, Merchandizes, or other their Goods by Us, or by any other, or others in any case, and necessity whatsoever, against the will of the said Merchants, without the price presently paid, for which the said Merchants might sell to others, wares of the like sort for, or otherwise to satisfie them, so as they shall repute themselves contented. And that no Appraisalment or value shall be put upon the said Merchants Wares, Merchandizes, or Goods, by Us or Our Ministers.

*Item*, We will, That all Bayliffs, and Officers of Fairs, Cities, Boroughs, and Market Towns, shall do speedy Justice to the said Merchants complaining to them, from day to day, without delay, according to the *Merchants Law*, concerning all and every thing which by the said *Law* may be determined: And if any defect shall happen to be found in any of Our Bayliffs or Ministers afore said,

tero de mercimonijs, Merchandis, seu alijs bonis suis per nos, vel alium, seu alios, pro aliqua necessitate vel casu, contra voluntatem ipsorum Mercatoꝝum aliquatenus faciemus, aut fieri patiemur; nisi statim soluto precio pro quo ipsi Mercatores alijs hujusmodi mercimonia vendere possint, vel eis alias satisfactio ita quod reputent se contentos, & quod super mercimonia, merchandisas, seu bona ipsorum per nos, vel ministros nostros, nulla appreciatio, aut æstimatio imponetur.

*Item*, Volumus quod omnes Ballivi, & Ministri feriarum Civitatum, Burgoꝝum, & Villarum Mercatoꝝiarum, mercatoꝝibus ante dictis conquerentibus coram eis, celerem justitiam faciant de die in diem sine dilatione, secundum LEGEM MERCATORIAM, de universis & singulis que per eandem Legem poterunt terminari. Et si forte inveniatur defectus in aliquo Balivoꝝum vel ministroꝝum

nistorum predictorum unde  
 iidem Mercatores, vel eo-  
 rum aliquis dilectus incom-  
 moda sustinuerint, vel susti-  
 nuerit, licet Mercator ver-  
 sus partem in principali re-  
 cuperaverit dampna sua, ni-  
 chilominus Ballivus, vel  
 minister alius versus Nos,  
 prout delictum exigit, pu-  
 niatur, & punitionem istam  
 concedimus in favorem mer-  
 catorum predictorum, pro  
 eorum iustitia maturanda.

Item, quod in omnibus  
 generibus placitorum, salvo  
 casu criminis pro quo infi-  
 genda sit poena mortis, ubi  
 Mercatur implacitatus fu-  
 erit vel alium implacitave-  
 rit, cujuscunque conditio-  
 nis idem implacitatus ex-  
 titerit, extraneus vel pri-  
 vatus, in Hundinis, Civi-  
 tatibus, sive Burgis ubi  
 fuerit sufficiens copia Mer-  
 catorum predictarum terra-  
 rum, & Inquisitio fieri de-  
 beat, sit medietas Inquisi-  
 tionis de eisdem Mercatori-  
 bus, & medietas altera de  
 alijs probis & legalibus ho-  
 minibus loci illius, ubi pla-  
 citum illud esse contigerit :  
 Et si de Mercatoribus dicta-  
 rum Terrarum numerus

whereby the said Merchants  
 or any of their Factors shall  
 suffer loss, although the  
 Merchant recover his losses  
 against the party in the  
 whole, Yet nevertheless, the  
 Bayliff, or other Ministers  
 of Ours as the fault requires  
 shall be punished, and We  
 grant the said punishment  
 in favour of the Merchants  
 aforesaid, for compleating  
 their right.

*Item,* That in all kinds  
 of Pleas, saving in the case  
 of Crime, for which the  
 pain of Death is liable to be  
 inflicted, where the Mer-  
 chant shall be impleaded, or  
 he implead another, of  
 whatsoever condition he  
 that is impleaded be of,  
 whether a Forreiner or a  
 Domestick, in the said Fairs,  
 Cities or Boroughs, where  
 there is a sufficient plenty  
 of Merchants of the Lands  
 aforesaid, and Inquisition  
 there ought to be made ;  
 Half of the Inquisition shall  
 be of the said forrein Mer-  
 chants, and the other half  
 of honest and lawful men,  
 where the Plea happens to  
 be : And if a sufficient num-  
 ber

ber of the Merchants of the said Lands shall not be found, let those be put in the Inquisition who shall be found fit in that place, and let the residue be of other good and fit men, in the places in which that plaint shall be.

*Item*, We will, Ordain, and appoint, That in every Market Town and Fair of Our said Kingdom, and elsewhere within our Dominion, *Our Weight* is to be put in a certain place, and before weighing thereof, the Scale to be empty in the presence of Buyer and Seller, and the arms thereof to be equal, and when he hath set the Scale equal, he is forthwith to take off his hands, so that it may remain equal; And that throughout Our whole Kingdome and Dominion, there be one Weight and Measure, both of them sealed with the sign of Our Standard, and that every one may have a Scale of one *Quarteroni* and under, where contrary to the Governour of the said place, or Liberty by Us, or Our Ancestors was not granted,

non inveniatur sufficiens, ponantur in Inquisitione illi qui idonei invenientur ibidem, & residui sint de aliis bonis hominibus, & idoneis, de locis in quibus placitum illud erit.

*Item*, *Volumus*, *Ordinamus*, & *Statuimus*, quod in quolibet *Villa Mercatoria*, & *feria Regni nostri predicti*, & alibi *infra potestatem nostram*, *Pondus nostrum* in certo loco ponatur, & ante ponderationem *Statera* in presentia *Emptoris & Venditoris* vacua videatur, & quod *brachia* sint equalia, & ex tunc *Ponderator* ponderet in equali, & cum *Statera* posuerit in equali, statim amoveat manus suas ita quod remaneat in equali, quodq; per totum Regnum, & potestatem nostram unum sit pondus & una mensura, & signo *Standardi* nostri signentur, & quod quilibet possit habere *Stateram* unius *Quarteroni* & infra, ubi contra *Dominum loci*, aut *libertatem* per *Nos*, seu *Antecessores nostros* concessam illud non fuerit,

fuerit, sive contra villarum aut feriarum consuetudinem hactenus observatam.

Item, *Volumus*, & concedimus quod aliquis certus homo, & fidelis, & discretus London residens, assignetur *Justiciarius* mercatoribus memoratis, coram quobus valeant specialiter placitare, & debita sua recuperare celeriter, si *Vicecomites* & *Majores* eis non facerent de die in diem celeris justitiæ complementum, & inde fiat *Comissio* extra cartam presentem concessa Mercatoribus ante dictis, scilicet de hijs que sunt inter Mercatores, & Mercatores, secundum *LEGEM MERCATORIAM* deducenda.

Item, *Ordinamus*, & *Statuimus*, & *Ordinationem* illam statutumque pro Nobis & Heredibus nostris in perpetuum Voluimus firmiter observari, quod pro quacunque libertate quam Nos vel Veredes nostri de cætero concedimus, prefati Mercatores supra-scriptas Libertates, vel earum aliquam non amittant.

or contrary to the Custom of the Villages and Fairs hitherto observed.

*Item*, We will and grant, That some certain faithful and discreet person residing in *London*, may be appointed a *Justice* in behalf of the before mentioned Merchants, before whom they may plead specially, and more speedily recover their Debts, if the Sheriffs, and Mayors, distribute not to them, day by day, compleat and speedy Justice; that then a Commission be granted to the aforesaid Merchants, besides this present Charter, *viz.* Concerning those [*Goods*] which are to be conveyed between Merchants and Merchants, according to the *Merchants Law*.

*Item*, We Ordain and Appoint, and Our Will and Pleasure is, for Us, and Our Heirs, That this Ordinance and Statute be firmly kept for ever, notwithstanding any liberty whatsoever which We or Our Heirs for the future shall grant; the said Merchants ought not to lose their above written

Hh

Liber-



Liberties, or any of them: And for and in consideration of their obtaining the said Liberties, and free Usages, and Our Prises to be remitted to them: All and singular the said Merchants for themselves, and all others on their part, have heartily and unanimously granted to Us that for every *Hogshead of Wine* which they shall bring in, or cause to be brought in within Our Kingdome, or Dominion thereof; and from whence they are obliged to pay Freight to the Mariners, to pay to Us and to Our Heirs, by the name of Custome two shillings over and above the ancient Customs due, and accustomed to be paid in *pence* within Fourty dayes after the said Wines are put on shoare out of the Ships.

*Item*, For every *Sack of Wooll*, which the said Merchants or others in their names do buy, and out of this Kingdom transport, or buy to transport, shall pay fourty pence over and above the ancient Custom of half a Mark, which former-

*Pro supradictis autem libertatibus & liberis consuetudinibus optinendis, & Prisus nostris remittendis eisdem supradicti Mercatores universi & singuli pro se & omnibus alijs de partibus suis, Nobis concorditer & unanimiter concesserunt quod de quolibet Dolio vini quod adducent, vel adduci facient infra Regnum, & Potestatem nostram, & unde Marinariis frettum solvere tenebuntur, solvent Nobis & Heredibus nostris nomine Custumæ, duos Solidos ultra antiquas Custumas debitas, & in Denarijs solbi consuetas, nobis aut alijs infra quadraginta dies postquam extra Mares ad Terram posita fuerint dicta vina.*



*Item*, de quolibet Sacco Lanæ quem dicti Mercatores, aut alijs nomine ipsorum ement, & de Regno nostro educent, aut emi, & educi facient, solvent quadraginta Denarios de incremento, ultra Custumam antiquam dimidiæ Marcæ que

que prius fuerat persoluta :  
Et pro Lasto Coriorum ex-  
tra Regnum, & Potestatem  
nostram vehendorum dimi-  
diam Marcam, supra id  
quod ex antiqua Custuma  
antea solvebatur; Et simi-  
liter de trescentis pellibus  
Lanutis, extra Regnum &  
Potestatem nostram, dedu-  
cendis, quadraginta dena-  
rios ultra certum illud quod  
de antiqua Custuma fuerat  
prius datum.

Item, duos Solidos de  
qualibet Scarleta, & panno  
tincto in grano.

Item, Decem & octo de-  
narios de quolibet panno in  
quo pars grani fuerit inter-  
mixta.

Item, Duodecim dena-  
rios de quolibet panno alio  
sine grano.

Item, Duodecim denarios  
de quolibet Ceræ quintal-  
lo.

Cumque de prefatis Mer-  
catoribus nonnulli eorum  
alias exerceant Merchandi-  
sas, ut de Aderio ponderis,  
& de alijs rebus, subtilibus

ly was paid. And for a  
Last of Hides carried out of  
this Our Kingdom and Do-  
minion thereof, to be sold,  
half a Mark over and above  
that which according to  
ancient Custome was for-  
merly paid; and likewise  
for Three hundred Wooll-  
fels to be carried out of this  
Kingdom, forty pence, be-  
sides that certain sum which  
according to ancient Cu-  
stome was formerly gi-  
ven.

Item, Two shillings for  
every Scarlet, and Cloth  
dyed in grain.

Item, Eighteen pence for  
every Cloth in which part  
of a grain-colour is inter-  
mixt.

Item, Twelve pence for  
every other Cloth without  
grain.

Item, Twelve pence for  
every Quintal of Wax.

And whereas some of the  
said Merchants deal in o-  
ther Commodities, as Goods  
weighed with *Avoir-du-  
pois* Weights, and in other

fine Goods, as Cloth of  
*Tarsen*, of Silk,  
 of \* *Cindatis*, of  
 Hair, and in di-  
 vers other Mer-  
 chandizes, in  
 Horses also, and  
 other Animals, Corn, and  
 other Wares and Merchan-  
 dizes of different sorts,  
 which cannot easily be put  
 to a certain rate of Custom;  
 The said Merchants have  
 consented to give Us and  
 Our Heirs for ever Twenty  
 shillings Estimation and va-  
 lue of those Wares and  
 Merchandizes, by whatso-  
 ever name they be called,  
 three pence in the pound,  
 upon the Entrance of their  
 Wares and Merchandizes  
 into Our Kingdom, and Do-  
 minion aforesaid, within  
 twenty dayes after such  
 Wares and Merchandizes  
 shall be brought into Our  
 Kingdom, and Dominion  
 aforesaid, and there shall be  
 unladen, or sold. And like-  
 wise three pence for every  
 twenty shillings, at the Ex-  
 porting of what kind so-  
 ever of Wares or Merchan-  
 dizes bought in Our King-  
 dom, and Dominion afore-

\* It is supposed  
 it should be  
 Sindonibus, of  
 Lawn, Cam-  
 brick or other  
 fine Linnen.

sicut de pannis *Tarsen*. de  
*Serico*, de *Cindatis*, de  
*Seta*, & alijs diversis mer-  
 cibus, & de equis etiam, ac  
 alijs animalibus *Blado*, &  
 alijs rebus, & *Merchandis*-  
*is*, multimodis, que ad cer-  
 tam *Custumam* facile poni  
 non poterunt, iidem *Mer*-  
*catores* concesserunt dare  
 Nobis, & *Hereditibus* nostris  
 de qualibet libra argenti  
 estimationis seu valoris re-  
 rum, & *Merchandisarum* hu-  
 jusmodi quocunque nomine  
 censeantur, tres denarios de  
 libra in introitu rerum, &  
*Merchandisarum* ipsarum  
 in Regnum, & *Potestatem*  
 nostram predictam infra Vi-  
 ginti dies, postquam hujus-  
 modi *Res* & *Merchandise*  
 in Regnum & *Potestatem*  
 nostram adducte, & etiam  
 ibidem exoneratæ, si bene-  
 dictæ fuerint; Et Similiter  
 tres denarios de qualibet  
 libra argenti in educatione  
 quarumcunque rerum, &  
*Merchandisarum* hujusmo-  
 di emptarum in Regno, &  
*Potestate* nostra predictis,  
 ultra *Custumas* antiquas  
 nobis, aut alijs ante datas.  
 Et super valore, & estima-  
 tione rerum & *Merchandi*-  
*sarum*

sarum huiusmodi, de quibus tres denarij de qualibet libra argenti sicut predicatur sunt solvendi; credatur eis per literas quas de Dominis aut socijs suis offendere poterunt, & si literas non habeant, Stetur in hac parte ipsorum Mercatorum si presentes fuerint, vel valletorum suorum in eorundem Mercatorum absentia iuramentis.

Liceat insuper Socijs de Societate Mercatorum predictorum infra Regnum, & Potestatem nostram predictam, lanas vendere alijs socijs suis, & similiter emere ab eisdem absque Custuma solvenda; ita tamen quod dictæ Lanæ ad tales manus non deveniant, quod Custuma nobis debita defraudemur.

Et præterea est sciendum, quod postquam sæpèdicti Mercatores semel in uno loco infra Regnum & Potestatem nostram Custu-

saïd, besides the ancient Customs formerly given to Us or to others. And over and above the value and estimation of the said Wares & Merchandizes for which three pence for every twenty shillings as aforesaïd are to be paid, they are to have credit by Letters, by them to be produced from their Principals or Partners, and if they have none, Let it be determined in this case, by the Oaths of the said Merchants, or in their absence, of their Servants.

Moreover, It may be lawful for the Society of the Merchants aforesaïd, to sell Wooll to the fellows of the said Society, and likewise to buy the same one of another within Our Kingdom and Dominion, without payment of Custom: Provided that the saïd Wooll come not to such hands whereby we may be defrauded of Our Customs.

And furthermore be it known, That after the saïd Merchants have once in any one place within Our Kingdom and Dominion.



paid our Customs granted, as aforesaid, to Us; for their Merchandizes in form aforesaid, and thereupon they have their Warrant, they shall be free, and unmolested in all other places within Our Kingdom and Dominion, from payment of the said Custom for the same Commodities or Merchandizes by the said Warrant, whether such Merchandizes remain within our Kingdom, and Dominion, or are carried out, Except Wines, which without Our leave or licence, as aforesaid, are by no means to be Exported out of Our Kingdom.

We will also, and for Us, and Our Heirs grant, That no Exaction, Prise or or Loan, or any other burden shall be imposed in any part or measure on the persons of the said Merchants, their Merchandizes, or Goods contrary to the form before expressed and granted.

Witness hereto, The Reverend Fathers *Robert Arch-*

nam nobis concessam superius, pro Merchandis suis in forma solverint supradicta & suam habeant inde Warrantum, erunt liberi & quieti in omnibus alijs locis infra Regnum, & Potestatem nostram predictam, de solutione Customæ huiusmodi pro eisdem Merchandis, seu mercimonijs per idem Warrantum, sive huiusmodi Merchandis infra Regnum, & Potestatem nostram remaneant, sive exterius deferantur, Exceptis vinis, que de Regno & Potestate nostra predictis, sine voluntate & licentia nostra sicut predictum est, nullatenus educantur.

Volumus autem ac pro Nobis & Heredibus nostris concedimus, quod nulla exactio, Prisæ vel Prestatio, aut aliquod aliud onus super personas Mercatorum predictorum, Merchandisas, seu bona eorundem aliquatenus imponatur, contra formam expressam superius, & concessam.

In testibus venerabilibus Patribus Roberto Cantuariensi

tuariensi Archiepiscopo totius Angliæ Primatæ, Waltero Coventr. & Litchf. Episcopo, Henrie de Lacy, Comite Lincoln. Humfrido de Bohun Comite Hereford. & Essex, ac Corstabular. Angl. Adomar. de Valencia, Galfrido de Geynvill, Hugone le de Spencer, Waltero de bello Campo Senescallo Hospitij nostri, Roberto de Bures & alijs. Dat. per manum nostram apud Westm. primo die Febr.

bishop of Canterbury Primate of all England, Walter Bishop of Coventry and Lichfield, Henry de Lacy Earl of Lincoln, Humphrey de Bohun Earl of Hereford and Essex, and Constable of England, Adomarus of Valentia, Galfrid of Geynvil, Hugh de le Spencer, Walter de bello Campo Chamberlain of our House, Robert of Bures, and others. Given by Our Hand at Westminster the First day of February.

VIII. Subsidy is a Duty payable for Merchandizes Exported and Imported, granted by Act of Parliament for the life of the King. And are,

*Sir John Davies in the Case of Customs.*

1. Ayds and Subsidies payable out of Native Commodities Exported and Imported.

2. *Tunnage*, which is a Subsidy out of Wines of all sorts; and *Poundage*, which is a Subsidy granted out of all Commodities Exported and Imported, except Wines and ancient Staple Commodities, and is the 20th part of the Merchandize, Imposts or Duties payable for Merchandizes rated and assessed by Parliament; and then they are in the nature of Subsidies imposed by the Kings Prerogative.

*Vide the Stat. 12 Car. 2. of Tunnage and Poundage.*

The Rates are generally agreed on by the Commons House of Parliament, and are exprest in a Book commonly called the *Rates of Merchandize*; that is to say, the Subsidy of Tonnage and Poundage, and the Subsidy of Woollen Cloathes or old Drapery, and are subscribed with the hand of the Speaker.

IX. All Merchant-Strangers bringing in any sort of

H h 4

Wines,

Wines, are to pay Thirty shillings in the Tun over and above the Rates which the Natives pay, including Twenty shillings the Tun formerly paid to His Majesty by the name *Southampton Duties*, for all Wines of the growth of the *Levant*; for which sort of Wines, the Stranger is also to pay to the use of the Town of *Southampton* for every Butt or Bipe Ten shillings.

*Vide in tit.  
Prisage.*

Aliens are likewise to pay the ancient Duty of Butlerage, which is 2 s. per Tun.

*Rule, That all such Wines as shall be landed in any of the Out Ports, and Custome paid, and afterwards brought to the Port of London by Certificate, shall pay so much more Custome as they paid short of the Duty due in the Port of London.*

Directions on  
Tunnage.

For every Tun of Beer to be Exported in shipping English built in money must be paid Two shillings; And for every Tun of Beer Exported in any other shipping in money six shillings.

Directions in  
Poundage.

X. If there shall happen to be brought or carried out of this Realm any Goods lyable to the payment of Custome and Subsidy which are omitted in the Book of Rates, or are not now used to be brought in or carried out, or by reason of the great diversity of the value of some Goods could not be Rated; That in such case every Customer or Collector for the time being, shall and may levy the said Custome and Subsidy of Poundage according to the value and price of such Goods to be affirmed upon the Oath of the Merchant in the presence of the Customer, Collector, Comptroller and Surveyor, or any two of them,

Directions for  
the payment  
of the Subsidy  
upon Woollen  
Clothes, or old  
Drapery.

XI. Every Englishman shall pay for every short Cloth containing in length not above 28 Yards, and in weight not above 64 l. white or coloured by him to be shipped and carried out of this Kingdom, Three shillings four pence, being after the rate of two farthings and half a farthing the pound weight.

And so after that rate for all other sorts of Clothes of

of greater length and weight, allowing not above Twenty eight yards, and sixty four pound to a short Cloth; that is to say, for every pound weight over and above sixty four pound, two farthings and a half farthing: and for all other sorts of lesser Clothes to be allowed to a short Cloth; that is to say, every Stranger shall pay for every short Cloth *cont'* in length not above 28 yards, and in weight not above 64 l. white or coloured by him to be shipped or carried out of this Kingdom, Six shillings eight pence, besides the old duty of one shilling and two pence.

And so after that rate for all other sorts of Clothes of greater length and weight; and for all sorts of lesser Clothes to be allowed to a short Cloth: That is to say,

*Dorset and Somerset Dozens, Rudge washt, Cardinals, Pin-whites, Straites, Statutes Stockbridge, Tavestock,* seven of each sort shall be allowed to a short Cloth.

*Tauntons, Bridgwaters, and Dunstars,* the 5. not exceeding 64 l. in weight; *Devon. Dozens* containing 12 or 13 yards, in weight 13 l. Five to be allowed to a short Cloth.

Ordinary *Pennystones*, or *Forrest Whites cont'* between 12 or 13 yards, and in weight 28 pounds, *Shorting Pennystones cont'* 13 or 14 yards, and in weight 35 pounds unfreized, Four to be allowed to a short Cloth.

Narrow *Yorkshire Kerfies Whites and Reds cont'*, not above 17 or 18 yards, and in weight 22 pound. *Hampshire Ordinary Kerfies, Newberry Whites,* and other Kerfies of like making *cont'* 24 yards, and in weight 28 l. *Sorting Hampshire Kerfies cont'* 28 pound, and in weight 32 pound; Three of them to make a short Cloth.

Northern Dozens, single sorting *Pennystons cont'*, between 13 and 15 yards, and in weight 53 pound Frized, Two of them to make a short Cloth.

And



And the Northern Dozens double; one to be accounted for a short Cloth.

All which shall go and be accounted for short Clothes, and shall pay after the rate of the short Cloth before rated, and for over weight 2. farthings and one half the pound.

The New sort of Cloth called the Spanish Cloth, otherwise Narrow List, Western Broad Cloth not exceeding 25 yards in length, and 43 pounds in weight, to be accounted two thirds of the short Cloth before rated.

And for every pound weight exceeding 43 pounds, two farthings and half a farthing the pound weight.

Cloth Rashes *alias* Cloth Serges *cont'* 30 yards weighing 40 pound, to be accounted two thirds of the short Cloth before rated.

And for every pound exceeding 40 pound weight, two farthings and half a farthing the pound weight.

And for any other sort of Woollen Cloth of the Old or New Drapery, and not mentioned in that Book, to pay two farthings and half a farthing the pound weight, And for any other sort of Woollen Cloth of the Old or New Drapery and not mentioned, is to pay 2 farthings and half a farthing for the Subsidy of every pound thereof.

---

## CHAP. XIII.

Of Impositions Subsequent, Conditional,  
Temporary, &c.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of Impositions on the Manufactures of France by <i>Lex talionis</i>.</p> <p>II. On Vineger, Perry, Cider and Rape, Customs payable by Denizens and Strangers, and Logwood made Importable.</p> <p>III. On Ships that have not two Decks, and 16 Guns.</p> <p>IV. On Salt, Beer, Cider, Perry, Vinegar, a further Duty.</p> <p>V. Of the Duty called Coynage, and upon what impos'd; and the Temporary Imposition called the Additional Duty.</p> <p>VI. Of Goods particular Imported by Aliens; And Rules for petty Customs and other matters relating to Duties.</p> <p>VII. Of Aliens Customs on Fish and other Commodities, and rates upon the same,</p> | <p>VIII. Impositions on Forraign Liquors, and Rates on the same.</p> <p>IX. Of Native Commodities, and such as were formerly prohibited may be transported, paying certain Duties.</p> <p>X. Beer, &amp;c. Exported; Skins, Leather, &amp;c. Transportable, paying such Duties — <i>Bulloign</i> and Coyn onely excepted.</p> <p>XI. Of Spices Importable by any Nation.</p> <p>XII. Of Great and lesser Officers Fees, and of Goods not paying one pound Customs in or out, what Fees to be taken.</p> <p>XIII. Voluntary Gifts from some esteemed no Bribes; and Rates about payment of Fees.</p> <p>XIV. Of Allowances for Jury, what.</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

There are several Duties imposed subsequent to the Duties payable by the Book of Rates, and over and above the same; That is to say, on all Ships belonging to the French King's Subjects, which shall lade or unlade any Goods in this Kingdome, or set on shore or take in any Passenger, to pay 10 s. per Tun; This was an *Oliver* for a *Rowland*, the French King having done us the like kindness, by imposing the value of 50 *Solz* 12 Car. 2. on every English Ship; this compliment lasts but 3. weeks longer then the French Kings, his remov'd, ours drops,

Subsequent Impositions to the Act of Tunnage and Poundage, and the Book of Rates.

This Collected  
as the Tunnage  
and Poundage  
is directed.

14 Car. 2.  
cap. 11. For  
preventing of  
Fraud.

14 Car. 2.  
cap. 11.

II. So likewise on Vinegar, Perry, Rape, Cider, and Cider-eager imported from Forraign Parts *per English*, shall answer Six pounds ten shillings *per Tun*; if by Strangers, then but six pounds.

But if they shall Export, then Three pounds ten shillings *per Tun* shall be repaid to the English, and Four pounds fifteen shillings to be repaid to strangers.

The Statute of *Eliz. Cap.* prohibiting the Importation of Logwood Repealed; and the same may be Imported paying 5 l. *per Tun*: and in case of Exportation then to be repaid 4 l. *per Tun*.

III. The Parliament taking likewise again into consideration the encouragement of Trading in Ships of force, have imposed on all Goods and Merchandize Imported and Exported, from and to the Mediterranean Sea, beyond *Malaga*, in any Ship that hath not two Decks and 16 Pieces of Ordnance mounted, and two men to each Gun, to pay over and above the Rates imposed by the Book of Rates one *per Cent*?; This does not extend to Ships laden with Fish, or half laden with Fish and other Commodities.

14 Car. 22. 11.

V. So likewise on Salt out of *Scotland* into *England*, one half-penny *per Gallon*.

18 Car. 2.  
cap. 5.

22 Car. 2.  
cap. 3.

Again, There is imposed on Wines, Vinegar, Cider, and Beer, Ten shillings *per Tun*; and on Brandy and Strong Waters 20 s. *per Tun*. For the Coinage Duty, the moneys that arises on this Duty is to be paid at the Custome-House to the Collectors and other Officers, to be by them kept apart from all other Moneys, and paid Quarterly into the Exchequer without Salary or Fee. The Goods are forfeitable for non-payment of this Duty; and the same is to be repaid if the Goods are transported within one year.

There is likewise an Imposition of 12 l. *per Tun* on *Spanish* Wines, and 8 l. *per Tun* on *French* Wines and Vinegar; but that is but temporary, and ends the 24<sup>th</sup> of *June*, 1678.

VI. There

**VI.** There is also Duties payable by Aliens for Goods Imported in Aliens Ships, commonly called *Navigation Duties*.

So likewise all Goods of the growth, production or Manufacture of *Muscovia* or *Russia*, and also of *Turkey*.

Per Act of Nav. 12 Car. cap. 18. *Vide* the Statutes, and the particular Commodities enumerated there.

*Note*, That in all cases where petty Custome inwards is payable, it is to be understood of the fourth part of the full Subsidy according to the rates and value in the Book of Rates before the 5. *per Cent.* is deducted.

*Rule.*

*Note*. Wines of all sorts Imported are to pay Aliens Duties.

*Rule.*  
*Vide* the Table of Strangers Duties upon Wines.

*Note*. That the Nett Subsidy of Vinegar, Perry, Rape, Cider, and Cider-eager both in *London* and out Ports, is the same with the Subsidy of *French Wines*, payable in *London*.

14 Car. 2.  
*Vide* Table of *French Wines*.

**VII.** So likewise there is a further Imposition called Aliens Custome for all Fish, Fish Oyl, Blubber, Whale-bone, or Whale-fins, not being caught in vessels belonging to *Englishmen*, are to pay double Strangers Custome.

Act of Navigation, 12 Car. 2. cap. 18.

So likewise Custome and Impost to be paid for several sorts of salted or dried Fish not imported in Ships English built, or belonging to *England*, and not having been stified and caught in such Ships.

Act of Trade, 15 Car. 2. cap. 7. *Vide* Stat. and the particulars enumerated.

Upon which ACT, *Note*, That the 5. *per Cent.* is not to be allowed out of the Petty Custome.

*Rule.*

**VIII.** There is likewise an Excise or Impost upon Forraign Liquors imported; That is to say, Beer or Ale 6 s. *per* Barrel; Cyder or Perry the Tun ten shillings; Brandy or Strong Waters perfectly made 8 d. *per* Gallon.

12 Car. 23, 24.  
22 Car. 2. 4.

If any of those Goods be landed before those Duties be fully paid and Warrants signed, and without pre-  
fence

15 Car. 2.  
cap. 11.



fence of an Officer, they are forfeited, the Informer half.

IX. There is likewise Duties imposed on several Commodities Exported by several Acts of Parliament subsequent to the Act of Tunnage and Poundage.

Act for Trade,  
15 Car. 2.  
cap. 7.

Coals Transported in *English* Shipping and Navigation for his Majesties Plantations in lieu of all Customs, shall pay onely for one Chaldron of *New-Castle* Measure 1 s. 8 d. For one Chaldron *London* Measure 1 s. Provided good Security be given for landing the said Coales accordingly.

Act for Til-  
lage, 22 Car. 2.  
cap. 3.

There are likewise several Native Commodities and Cattle prohibited by divers Acts of Parliament not to be Transported unless sold under such prices; but *non obstante* they may now be Exported, paying Customs according to the Book of Rates.

22, 23 Car. 2.  
20 Car. 2. 5.

X. There is likewise an Imposition on Beer, Ale and Mum to be Exported, to pay 1 s. *per* Tun and no more; But this is but *tempore* for 6. years.

20 Car. 2. 5.

So likewise Leather of all sorts, Sheep-skins, Calveskins, Tanned or dressed, *non obstante* any former Law, paying for each hundred weight *cont'* 112 l. weight one shilling and no more: This ends in 25th. of *March*, 1675. and both of them to the end of the next Sessions of Parliament after.

Act for Trade,  
15 Car. 2. 7.

Likewise all sorts of Forraign Coyne or Bullion of Gold or Silver may be Exported without paying any Duty or Fee for the same, entry being first made in the Customs-House; the like for Diamonds, Pretious Stones, Jewels, and Pearls of all sorts.

Proclam. Car.  
Regis, 20 Dec.  
1662. 26 Aug.  
1663. But see

XI. All persons whatsoever may Import from any place beyond Sea in English Ships, Mace, Nutmegs, Cynamon, Cloves, into *England, Wales, Jersey, Guernsey*, paying the Customs thereof. Provided before the lading thereof they give notice to the Commissioners or Farmers of the Customs of the quantity & quality they intend to lade, with the name of the Vessel in which

14 Car. 2. concerning Customs. \* Sir Francis Moore's Report, 224. Lord Cobham's Case. The like not long since adjudged in the *Common-Pleas* (on a Special Verdict found at *St. Edmonds-Bury* in *Sussex*) about *Mich.* 25, or *Hill.* 25 & 26 Car. 2.

they

they intend to import the same, and procure a Licence under the hands of the said Farmers or Commissioners, or any 3. of them for the Importing the same.

*Note.* If Goods are Wreck't, and the Lord seizes them, yet they ought not to pay Custome. \*

**XII.** Fees and Allowances due and payable to the Officers of his Majesties Customes and Subsidies in the Port of *London*, and the Members and Creeks thereunto belonging; That is to say, to the Officers of the Petty Customes Outwards, Subsidy Outward; Petty Customes Inwards, Subsidies Inwards, Great Customes, Clerks Fees Inwards and Outwards, the Kings Waiters being in number Eighteen, the Register of the Kings Warrants, the Usher of the Custome-House, Gaugers of *French Vessels*, Chief Searcher, and his Majesties five Under-Searchers in the Port of *London*; and the two Searchers at *Gravesend*, were all set and entred in a Table; the same was settled by the Commons House of Parliament, and signed by the Right Honourable Sir *Edward Turner* now Lord Chief Baron of his Majesties Court of *Exchequer*, and then Speaker to the Commons House of Parliament; at which time the Question being put, That for all Goods not paying one pound Custome in or out, there shall be but half Fees taken for all Cocks, Warrants, Debentures, Transires or Certificates; It was Resolved in the affirmative.

*Virtute cujus-  
dam Ordin. à  
Dom. Com. Sab-  
bati 17 Maij,  
14 Car. 2. Re-  
gis.*

**XIII.** Societies or Companies Trading in a joynt stock, and making but one single Entry, the Adventurers being many, the Table of Fees does not hinder; but the Officers and Waiters may receive such gratuity as the Company shall voluntarily give.

All Goods under the value of 5 l. in the Book of Rates paying Subsidy the sum of 5 s. or less, shall pass without payment of Fee.

*English* Merchants that shall land out of one Ship at one time (although the receipt of the Subsidy be distributed into several Offices) shall not pay any more than for a single entry.

The Goods of Partnership to pass as if the propriety were in one single person.

Fish

Fish by *English* in *English* shipping or Vessels inwards or Outwards all along the Coast to pay no Fee.

Post Entries inward to pass without Fee under five shillings; if above five shillings and under forty shillings, then six pence: but if the Custome to be paid exceed 40 s, then full Fees.

The Merchant shall pay for all Goods opening that shall be short entred above 10 s. Custome.

The Merchant shall pay for weighing of all Goods shall be short entred above 20 s. Custome.

The Merchant is not to be at any charge if duly Entred.

Tare and Tret, the first is the weight of the Cask, or Bale or Covering wherein goods are packed; the other is a consideration allowed in the weight for emptying and reselling the Goods.

XIV. There is likewise to be allowed to the Merchants a certain abatement called *Tare*, for Goods and Merchandize, the which is reduced into a Table, and cannot be deviated from in any case within the Port of *London*, without special direction of the Commissioners or Farmers; or in their absence of the consent of the General Surveyors, and Surveyor of the Ware-house, or of two of them at the least, whereof the Surveyor of the Ware-house to be one; and in the Out-Ports not without the consent and advice of the Collector and Surveyor: or where there is no Surveyor, by the Collector himself, giving speedy notice to the Commissioners or Farmers of the reason of so doing.

## CHAP. XIV.

Of Scavage, Package, Portecage, Ports,  
Members, Creeks, the Port of London,  
and places lawfull to lade and  
unlade in.

I. Scavage what, where payable,  
and to whom.

II. Who pay the same, and how  
Regulated and governed.

III. Goods omitted in the Sca-  
vage Table of Rates, how to  
pay.

IV. Of Package, how govern'd,  
and where payable.

V. Where Strangers shall pay as  
of old.

VI. Of Packers, water-side Por-  
ters, what Duties Strangers are  
to pay for shipping out their  
Goods.

VII. Of Ports, Members and

Creeks, what are meant and un-  
derstood by them as in reference  
to action, lawfull or unlaw-  
ful.

VIII. The severall Ports, Mem-  
bers and Creeks in England and  
Wales.

IX. Of the Extent of the Port of  
London.

X. Of the severall Keyes, Wharfs  
and other places lawfull for  
landing of Goods.

XII. What Goods are Excepted  
which may be shipped or landed  
at other places.

I. **S**avage is an ancient Toll or Custome exacted by  
Majors, Sheriffs, &c. of Merchant Strangers for  
Wares shewed or offered to sale within their precincts,  
which is prohibited by the Statute of 19 H. 7. cap. 8. in  
a Charter of King Henry the Second to Canterbury, it is  
written *Screwinga*.

The City of London still retain the Custome, of which  
in an old printed Book of the Customes of London it  
is there mentioned, and how to be disposed; of which  
Custome, halfe del apperteyneth to the Sheriffs, and  
the other halfe del to the Portys, in whose houses the  
Merchaunts



Merchants been lodged: And it is to wet that Scavage is the shew, by cause that Merchants shewen unto the Sherriffs Merchandizes of the which Customes ought to be taken ore that any there be sold,&c.

The *Scavage* that is taken consists of two parts, that which is payable by Denizens, and that which is required of Aliens: And that all persons subject to such Duties might not be imposed upon, there are Tables mentioning the particular Duties set up and approved by the Lords Chancellor, Treasurer, President, Privy Seal, Steward, and two Justices of the *Kings-Bench* and *Common-Pleas*; and by them subscribed, or any four of them at least: The which Duties are on *Goods* Inwards and Outwards.

Per Order in  
K. Charles the  
First, subscri-  
bed by William  
Lord Bishop  
of London,  
H Earl of Man-  
chester, Lord  
C. J. Brampston,  
and Lord Lit-  
tleton.

III. *Note.* All Goods mentioned in the Table of *Scavage*, and not mentioned in the Table of Rates, shall pay after the rate of one penny in the pound, according as they are expressed or valued in his Majestie's Book of Rates, and all others not expressed therein, shall pay the same Rates according to the true value.

*Note.* That all private Baulks 8. Inches square and upwards, are by the 23. Article annexed to the Book of Rates reputed Timber, and valued at 3 *d.* the foot, 50 Foot making one Load, the value of which is 12 *s.* 6 *d.*; and the Subsidy for one Load  $\frac{1}{4}$  of one penny, or one half penny and half one farthing, out of which the 5 *per Cent.* is to be deducted.

IV. There is likewise another Duty called *Package*, the which is likewise set and rated in a Table, and the which is taken of all the severall Commodities therein mentioned.

All Goods not mentioned in that Table are to pay for *Package* Duties, after the rate of one penny in the pound, according as they are expressed or valued in his Majesties Book of Rates, and all others not expressed

pressed therein shall pay the same rate according to their true value.

For every Entry in the Packer's Book for writing Bills to each entry outward as usually they have done, 12 d.

The Strangers are to pay the labouring Porters for making up their Goods, at their own charge, as alwayes they have done.

Strangers are likewise to pay the Water-side Porters belonging to the Package Office, such Fees and Duties for Landing and Shipping their Goods, as they usually have done within these 10 years.

The Packers Water-side Porters have Tables of Duties for landing of Strangers Goods, and for the shipping out their Goods; and Goods not mentioned in the Table are to pay Portage Duties as other Goods do of like Bulk or condition therein expressed.

VII. Port or *locus Publicus*, are those places to which the Officers of the Customes are appropriated, and which contain and include all the Priviledges and guidance of all Members and Creeks thereunto allotted,

*Portus qua publicus non solum mercibus exonerandis inservit sed ut naves ibi tutum receptaculum habeant,*  
 & jure debito ac securitate fruuntur Navigantes quatenus innocuum iter et stationem querunt. Hinc Portus & Navalia Privilegio pacis publicæ gaudent. arg. 1. Leg. 1. §. stationem D. de flum. Cap. 2. jnr. Nautic. Sued. C. 1. §. 1. 4 H. 4. 20.

By *Members*, are those places where anciently a Customs-House hath been kept, and Officers or their Deputies attending, and are lawful places of Exportation or Importation.

*Creeks* are places where commonly Officers are or have been placed by way of prevention, not out of duty or right of attendance, and are not lawful places of Exportation or Importation without particular Licence or sufferance from the Port or Member under which it is placed.

Portus est conclusus locus quo importantur merces & exportantur l. 59. de verb. Sign. Alias statio, quod ibi tuto naues stare possint, leg. 1. §. 13. D. de flum.

VIII. The severall Ports and Members as now they account at the Custome-House, are,

Ports.	Members.	Creeks.
London		Gravesend.
	Malden	{ Leigh. Burnham. West Mersey.
Ipswich	Colchester.	{ East Mersey. Brickley. Wivenhoe.
		{ Maintree. Harwich.
	Woodbridge.	
Tarmonth.	Alborough.	{ Orford. Dunwick.
	Sowold.	Walderswick.
		Lestoffe.
	Blackney and Cley.	
Lynn.	Wells.	Burnham.
		Hitcham.
		Cross Keyes.
		Wisbeech.
		Spalding.
		Fosdick.
Boston.		Wainfleet.
		Numby Chappel.
		Thetlethorp.
		Salt-fleet.

Ports.

Ports.

Members.

Creeks.

Hull. ——— { Grimsby. ——— Gaintborpe.  
 ——— { Bridlington. ———  
 ——— { Scarborough. ———

New-Castle. ——— { Whitby. ———  
 ——— { Stockton. ——— Middlesborough.  
 ——— { Harlepoole. ———  
 ——— { Sunderland. ———  
 ——— { Sheilds. ———  
 ——— { Seaton delaval,  
 ——— { Blith nooke.

Berwick. ——— { Aylemouth.  
 ——— { Warnewater.  
 ——— { Holy Island.  
 ——— { East Marches, contain-  
 ——— { ing the Coast of Nor-  
 ——— { thumberland, border-  
 ——— { ing on Scotland.

Carlisle. ——— { ——— { West Marches, contain-  
 ——— { ——— { ing the Coast of Cum-  
 ——— { ——— { berland, bordering on  
 ——— { ——— { Scotland.  
 ——— { Whitehaven. ——— { Workington.  
 ——— { ——— { Ravenglas.  
 ——— { ——— { Milnthorpe.



Ports.

Members.

Creeks.

Lancaster.	{ Pyte of Fowdrey. Graunge.
Boulton.	{ Wyrewater. Preston and Ribble Water.
Liverpoole.	{ Sankey Bridge. Fradsham. South shoare of the River of Mersey to the Red Stones.
Chester.	{ Hilbree. Dampwoole. Neston. Burtonhead. Baghill. Mostin.
Aberconway.	
Bewmaris.	{ Holy-head. Amlogb.
Carnarvan.	{ Pulbelly. Barmonth.

Milford.

Ports.	Members.	Creeks.
	Aberdovy. ———	Abernstah.
Milford. ———	Cardigan. ———	Newport.
		Fiscard.
	Pembroke. ———	Haverford West. Tenby. Carmarthen. Lanelthy. Norib Burrys.
Cardiffe. ———	Swansey ———	South Burrys. Neath or Britton Ferry. Newton.
		Aberthaw. Penarth. Newport. Chepstow.
Glocester ———		River Severn from Bridge-North to King-Road.
Bristol. ———		Pill. Upbill.
Bridgewater. ———	Minhead. ———	

Ports.

Members.

Creeks.

	[ Padstow. ————— ]	
	[ St. Ives. ————— ]	
	[ Pensance. ————— ]	
	[ Helford. ————— ]	
	[ Falmouth. ————— ]	{ Penrin. St. Mawres. Truro.
Plymouth. ———— ]	[ Fowey. ————— ]	
	[ Lowe. ————— ]	
	[ ————— ]	{ Saltash. Stonehouse. Cowland.
	[ Ilfracomb. ————— ]	
	[ Barnstable ————— ]	{ Clowelly. Appledore. Biddiford.
		[ Tincomb. Starrcross. Beare and Seaton. Topsham.
Exeter. ———— ]	[ ————— ]	{ Pouldram Sydmouth Lympton Exmouth Aylmouth.
	[ Dartmouth. ————— ]	{ Saltcomb Brixham Torbay Totnes.

Poole.

Ports.

Members.

Creeks.

Poole.	Lyme.	Bridport.
		Charmouth.
	Weymouth.	Portland.
		Lulworth.
Southampton.		Swanidge.
		Wareham.
		Christchurch.
		Hinington.
	Cowes.	Yarmouth.
		Newport.
	Portsmouth.	Emsworth.
	Arundell.	Pagham Point.
		Selfey.
	Skorham.	Brightbempston.
Chichester.	Lewis.	New Haven.
		Seaford.
	Bemsey.	
	Hastings.	
	Rye.	Winchelsea.
		Lyd.
		Rumney.
	Hyth.	

Sandwich.



Ports.

Members.

Creeks.



*Note.* All the Ports and Havens in England are *infra* *Corpus Comit'*, and that the Court of Admiralty cannot hold Jurisdiction of any thing done in them. *Hollands Case*, Earl of *Exeter*, 30 H. 6. And because he held Plea in the Admiralty of a thing done *infra* *Portum de Hull*, damages were recovered against him 2000 pounds. *Vide Mich. 12 Jac. C.B. Greenway vers' Barber, Godbolt 260, 261.*

*Ad Portus instaurationem quia publica utilitatis gratia fit omnes subditi loci conferre operas debent. l. 7. C. de oper. pub.*

*Portus intuitu fluminis quo ambitur, &*

*vestigialis quod ex Navium statione penditur, est publicus & hodie Regalibus accensitur. §. 2. Inst. de rer. divo. l. 4. §. D. de tod. c. un. que sunt Rega.*

I X. In regard that the Port of *London* is of great concern as in relation to the Customes, the extent and limits of the same Port is by the *Exchequer* settled, which is declared to extend and be accounted, from the Promontory or Point called *North-Foreland* in the Isle of *Thanet*, and from thence *Northward* in a supposed line, to the opposite Promontory or Point called the *Nase*, beyond the *Gunfleet* upon the Coast of *Essex*, and so continued Westward thorough the River of *Thames*, and the several Channels, Streams and Rivers falling into it,

to London-Bridge, save the usual and known right, liberty and priviledge to the Ports of *Sandwich* and *Ipswich*, and either of them, and the known Members thereof, and of the Customers, Comptrollers, Searchers and other Deputies of and within the said Ports of *Sandwich* and *Ipswich*, and the several Creeks, Harbours and Havens to them or either of them respectively belonging within the Counties of *Kent* or *Essex*.

X. And in regard that when Ships did come up to the Port of *London*, there used to be very great Frauds committed by a promiscuous kind of shipping and landing of Goods and Merchandizes at several blind or unknown Wharves and Keyes, by reason of which his Majesty was often defeated of his Customes, it was provided that a Commission might issue forth out of the *Exchequer* to ascertain all such Wharves, Keyes or other places as his Majesty by virtue of such Commission should appoint, in pursuance of which his Majesty hath been pleased to allow to be lawful Keyes, Wharves and other places for the lading or landing of Goods,

*Brewers Key.*

*Chesters Key.*

*Wooll Dock.*

\* *Customs*

*House Key.*

\* Some Stairs on the West side thereof is declared not to be a place for shipping or lading of Goods.

*Porters Key.*

*Bear Key.*

† *Sabbs Dock.*

† Excluding the Stairs there, which are declared no lawful place for shipping, or landing of Goods or Merchandize.

*Wiggon's Key.*

*Youngs Key.*

*Ralphs Key.*

\* *Dice Key.*

\* The Stairs there declared unlawful for shipping or landing Goods or Merchandize.

*Smart Key,* } † The Staires there declared no lawful  
 † *Somers Key,* } place for shipping and landing of  
 Goods and Merchandizes.

*Lyon Key,* {  
*Butolph Wharfe,* } \* The Staires on the East declared un-  
 } lawful for shipping or landing of  
*Hamons Key,* } any Goods, &c.  
 \* *Gaunts Key.* {

*Cocks Key.* } One other place betwixt *Cocks Key* and  
 } *Fresh Wharfe*, called part of *Fresh Wharfe*,  
 the Staires are declared to be unlaw-  
 ful for shipping or landing of any  
 Goods, &c.

*Fresh Wharfe.*

*Billingsgate.* { To be a common open place for the land-  
 } ing or bringing in of Fish, Salt, Vic-  
 } tuals, or Fuel of all sorts, and all  
 Native Materials for Building, and  
 for Fruit (all manner of Grocery ex-  
 cepted), and for carrying out of the  
 same, and for no other Wares or  
 Merchandize.

*Bridge-House in* } May be allowed a place convenient  
*Southwark,* } for landing of any kind of Corn  
 bought or provided for Provision  
 or Victualling of the City of London,  
 and not upon any private or parti-  
 cular persons account, and for no  
 other Goods or Merchandize,

XI. It may be lawful for any person to ship or lade  
 into any Ship or Vessel on the River of *Thames* bound  
 over

over Seas, Horses, Coals, Beer, Ordinary Stones for Building. Fish taken by any of his Majesties Subjects, Corn or Grain, the Duties being paid, and Cocquets and othar lawful Warrant duly passed for the same.

So likewise Deal Boards, Balks and all sorts of Mafts and Great Timber may be unshipt and laid on Land at any place between *Lyme-house* and *Westminster*, the Owner first paying or compounding for the Customes, and declaring at what place they will land them before he unships them, and upon Licence had and in the presence of an Officer they may unlade them; otherwise they incur a forfeiture,

---

CHAP.

---



## CHAP. XV.

### Provisions and Allowances made notwithstanding the several Clauses in the Acts for the Customs.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Custome to be paid for no more then is landed; and when Bulk shall be broken.</p> <p>II. Of Goods Imported and Exported, what of the Customs shall be repaid back, and by whom; and of the things requisite in the same.</p> <p>III. Of Agreement or Contracts made or to be made for the importing and exporting by way of Composition ratified.</p> <p>IV. What Allowances to be made to the Exporters of Wines.</p> <p>V. Of Exporting of Spanish wooll; where the same may be done.</p> <p>VI. Of Currants Exported, what Allowances shall be made, and to whom, as well to Denizens as Foreigners.</p> <p>VII. Goods imported not finding Market after a year; Wine Exported discharged of Custome.</p> <p>VIII. What Allowances are to be made for Leakage.</p> <p>IX. What shall be accounted Leakage.</p> <p>X. Wines proving unmerchable, what allowances to be made.</p> <p>XI. Tobaccoes receiving detriment or damage in the Importation, what allowances to be made.</p> <p>XII. Strangers paying double Subsidy, where they shall pay double Custome.</p> <p>XIII. Of Times and places law-</p> | <p>ful to unlade, and Officers Duties then attendant to be present.</p> <p>XIV. York, New-Castle and Hull men where Custome-free, and for what.</p> <p>XV. Exceter and other Western men, what Free Subsidies shall be allowed in.</p> <p>XVI. Woollen where new or Old what allowances shall be made in Custome or Subsidy.</p> <p>XVII. Allowances of 5. in the Hundred for all other Goods.</p> <p>XVIII. The Customers and other Officers Duties in reference to attend their several Duties in the Customs.</p> <p>XIX. Of Officers their Duties, and the punishments where made on complaint.</p> <p>XX. The several Duties of London how preserved.</p> <p>XXI. The like for other Cities for those Duties granted or taken for publique good uses.</p> <p>XXII. Where Ships may be visited, and the Officers duty relating to the same.</p> <p>XXXIII. Timber to be rated, and in what manner must pay.</p> <p>XXIV. Prevention in Extortion of Customers and Officers, and on what pains and penalties.</p> <p>XXV. Where Fees for Cocquets and Certificates shall be paid altogether, and where he shall detain</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

detain his own Cocquet till the Vessel has broke ground.

XXVI. where the Officers and Customers shall allow and make good to the Merchants the Allegiance Duty and all other allowances, and no other Imposition or Duty required by the Book of Rates, shall be required or paid.

XXVII. If Goods shall happen to

be taken by Enemies or Pyrats, or wreckt, and what allowances shall be paid.

XXVIII. Ships of warr and other priviledged Vessels subject to search.

XXIX. Of Allowances to be made, and of shipping out lesser quantities then is contained in the Certificate, what operation the same hath.

I. **E**very Merchant shall have free liberty to break Bulk in any Port allowed by Law, and to pay Custome and Subsidy for no more then he shall enter and land; Provided that the Master or Purser of every such Ship shall first make declaration upon Oath before any two Principal Officers of the Port of the true contents of his Ships lading, and shall likewise after declare upon his Oath, before the Customer, Collector, Comptroller, Surveyor, or any two of them at the next Port of this Kingdome where his Ship shall arrive, the Quantity and Quality of the Goods landed at the other Port where Bulk was first broken, and to whom they did belong.

*Vide Cap. 14.*  
what are law-  
ful places of  
landing.

A Merchant brought 80 Tun of Bay Salt by Sea to a Port in England, and out of that ship sold 20 Tun, and discharged the same into another Ship then riding at the same Port, but the 20 Tun were never actually put on shoare, and for the rest being 60 Tun the Master agreed for the Customes and put them on land; and although that that 20 Tun was alwayes water-born and never were put on shoare, yet adjudged they ought to pay; the reason was, for the discharging them out of the Ship, amounts as much as to the laying them on Land, the same being done in Port; for otherwise the King would meerly be defrauded. But if a Ship is carried in by storm, and to preserve the Vessel part is landed before the Duty paid, yet this will not subject the same to a forfeiture.

*Coke 12 part,*  
*fo: 17, 18.*

*Fogassat's case,*  
*Plowden. Com.*  
*fo. 9.*

II. All Forraign Goods and Merchandizes (except Wines, Currants and wrought Silks) first Imported, shall be again Exported by any Merchant English within

in 12 months, and such Merchant and Merchants as shall Export any such Forraign Goods or Merchandizes (except as before is excepted) shall have allowance and be repaid by the Officer which received the same, the one moyety of the Subsidy which was paid at the first importation of such Goods or Merchandizes, or any part thereof, so as due proof be first made by Certificate from the Officers of the due entry and payment of the Custome and Subsidy of all such Forraign Goods and Merchandizes inwards with the Oath of the Merchants importing the same, affirming the truth thereof, and the name of his Majesties Searcher, or Under-Searcher in the Port of London, and of the Searcher of any other the out Ports, testifying the shipping thereof to be Exported; after all which duly performed in manner before expressed, the moyety of the Subsidy first paid inwards, shall without any delay or reward be repaid unto such Merchant or Merchants who do export such Goods and Merchandizes, within one month after demand thereof, as also the whole additional duty of *Silk*, *Linnen* and *Tobacco* as before is directed.

If the Officer shall refuse to pay, (admitting there was no Relief had by way of complaint) whether the Merchant Exporter may not bring an Action against him upon the Debt created in Law, as he that hath a Tally may do.

14 H. 7.

III. And if there be any Agreement now in force, which was formerly made by the late Commissioners of the Customes and Subsidies, with the Merchants Strangers or their Factors, or shall hereafter be made by any Commissioners or Farmers of the Customes and Subsidies, or any other power (except by consent of Parliament) with any Merchant or Merchants Strangers or Factors for any Forraign Goods and Merchandizes, to be brought into the Port of London, or any other Port or Haven of this Kingdome of England, or Principality of Wales; and to be Exported again by way of Composition; all other Merchants being his Majesties Subjects shall be admitted into the same Composition,

position, and not to be excluded from any other privilege whatsoever granted to the stranger by any private agreement or composition, under the same Condition and with the same Restriction as shall be made with the Merchant Stranger.

IV. Every Merchant as well *English* as Stranger that shall ship and export any kind of Wines which formerly have paid all the duties of Tunnage inwards, shall have paid and allowed unto them all the Duties of Tunnage paid inward, except to the *Englishmen* 20 s. per Tun, and the Stranger 25 s. per Tun, upon due proof of the due Entry and payment of Tunnage inwards and of the shipping thereof to be Exported to be made as above.

V. If any Merchant, Denizen or Stranger shall Export any *Spanish* or Forraign *Wooll*, he shall have liberty so to do with this further condition, That such *Spanish* or other Forraign *Wools* whatsoever be not Exported in any other Ship or Vessel whatsoever, with intent to be arrived beyond the Seas out of the Kingdom of *England* and Dominion of *Wales*, then only in *English* Shipping, upon pain of confiscation.

12 Car. 2. Cap.  
32.  
14 Car. 2. Cap.  
18.

VI. Every Merchant as well *English* as Stranger, which shall ship or Export any Currants which formerly were duly entred and paid the Subsidy and Custome inwards, shall have allowed and repaid unto them respectively all the Custome and Subsidy paid inwards for the same, except 1 s. 6 d. for every Hundred weight to the *English*, and 1 s. 8 d. and one half penny for every Hundred weight to the Stranger, upon due proof of the due Entry and payment of the Custome and Subsidy thereof inwards, and of the Shipping thereof to be Exported to be made as in the second Article.

VII. If any Merchant having duly paid all Duties inwards for Forraign Goods, and in regard of bad sales shall be enforced to keep the same or any part thereof

K k

thereof



thereof in his hands after the space of a year shall be elapsed; in this case he or any other person is to be permitted to ship the same out for parts beyond the Seas if they think fit without payment for any Subsidy for the same outwards, upon due proof that the same was duly entred and Subsidy paid inward.

VIII. Every Merchant bringing in any sort of Wines into this Kingdome by way of Merchandize, and shall make due Entries of the same in the Custom-house, shall be allowed 12 *per Cent.* for Leakage.

IX. Every Hogshead of Wine which shall be run out and not full seven Inches, shall be accounted for outs, and the Merchant to pay no Subsidy for the same.

Boyce *versus*  
Cole *sen.* &  
Cole *jun.* Hill.  
27 Car. 2. in  
B. R.

And by some is conceived that no freight shall be paid for the same, but the Merchant may sling them up to the Master for Freight, but that should seem hard for *non constat* any fault in the Master, but the same may be in the Cask, or in the ill stowing (the Master by custome having no charge of the stowing of Wines, especially *French*, but the same belongs to certain Officers beyond Seas from whence they are imported) besides the Goods be they empty or full take up Tunnage in his Ship, and should all the Wines a Shipboard have the same misfortune, it would seem hard; however, it is pity Opinion in this case should amount to a laudable Custome.

X. If any Wines shall prove corrupt and unmerchantable, and fit for nothing but to distil into hot Waters or to make Vinegar, then every Owner of such Wines shall be abated in the Subsidy according to such his damages in those Wines by the discretion of the Collectors of the Customes and one of the Principal Officers.

XI. If any Tobacco or other Goods or Merchandize brought

brought into this Kingdome shall receive any damage by salt water or otherwise, so that the Owner thereof shall be prejudiced in the sale of such Goods, the principal Officers of the Custome-House, or any two of them, whereof the Collector for the time being to be one, shall have power to choose two indifferent Merchants experienced in the values of such Goods, who upon visiting of such goods, shall certifie and declare upon their Corporal Oaths first administred by the said Officers, what damage such Goods have received, and are lessened in their true value, and according to such damage in relation to the Rates set on them in the Book of values, the Officers are to make a proportionable abatement unto the Merchant or Owner, of the Subsidy due for the same.

There is a Book at the Customs-House, in which there is a general value set on all Goods, amongst which Tobacco is there valued.

**XII.** All Merchants Strangers who according to the rates and values set in the general Book of Values and Rates, and do pay double Subsidy for Lead, Tinn, Woollen Cloth, shall also pay double Custome for Native Manufactures of *Wooll*; and the said Strangers are to pay for all other Goods as well inwards as outwards, rated to pay the Subsidy of Poundage, three pence in the pound, or any other Duty payable by *Charta Mercatoria*, besides the Subsidy.

Nor can such Merchants Strangers land their Goods before they have agreed for the Customs, notwithstanding *Charta Mercatoria*.

**XIII.** That the Merchants Trading into the Port of *London* have free liberty to lade and unlade their Goods at any lawful Keyes and places of shipping† and lading of Goods between the *Tower of London*, and *London-Bridge*, and between Sun-rising and Sun-setting from the Tenth day of *September*, to the Tenth day of *March*; and between the hours of Six of the Clock in the Morning, and six of the Clock in the Evening, from the Tenth day of *March*, to the Tenth of *September*, giving notice thereof to the respective Officers appointed to attend the lading and unlading of Goods; and such Officer as shall refuse upon due calling to be present, he shall forfeit for every default 5 l. the one moyety to the King, the other to the party agrieved, he suing for the same.

† *Vide Lib. 3. Chap. 14. §. 10.*

XIV. The Merchants of *York, Kingston upon Hull, and New-Castle upon Tyne*, and the Members thereof, shall be allowed free Custome and Subsidy two of the *Northern* Clothes and Kerfies in ten to be shipped in those Ports in the name of *Double Wrappers*, as formerly has been there allowed them.

XV. The Merchants of *Exceter* and other Western parts shall be allowed free of Subsidies one *Perpetuane* in Ten for a *Wrapper*, and three *Devons Dozens* in Twenty for *Wrappers*, the same to be shipped out of the Ports of *Exceter, Plymouth, Dartmouth, Barnstable, Lyme Regis*, or the Members thereof.

*Note*, That all these severall allowances are not by Act of *Parliament*, but purely his Majesties gracious and voluntary gift and benig-nity towards the encourage-ing the Mer-chants and Trade.

XVI. All Merchants Transporting any sort of *Woollen* whether new or old Drapery, as also all *Bayer* and *Cottons*, shall be allowed one in ten for a *Wrapper* free of Custome and Subsidy.

XVII. Every Merchant shall be allowed upon all other Goods and Merchandize appointed to pay to any the Subsidy of Poundage according to the Rate in the Book of Values, to be Imported, 5. in the Hundred of all the said Subsidies of Poundage so appointed to be paid.

XVIII. The Officers who sit above in the Custome-House of the Port of *London*, shall attend the service of their severall places from 9. to 12 of the Forenoon, and one Officer or one able Clerk shall attend with the Book in the Afternoon during such time as the Officers are appointed to wait at the Waters side, for the better deciding of all Controversies that may happen concerning Merchants Warrants, all other the Officers of the Out-Ports shall attend every day in the Custome-House of every respective Port for dispatch of Merchants and Ships, between the hours of 9. and 12; and 2. and 4. in the Afternoon.

XIX. Every Merchant making an Entry of Goods either

either Inwards or Outwards, shall be dispatched in such Order as he cometh; and if any Officer or his Clerk, shall either for favour or reward put any Merchant or his Servant duly attending and making his Entries as aforesaid, to draw any other Reward or Gratuities from him then is limited in the Act of *Tunnage and Poundage*, and the general Book of Values, if the Master Officer be found faulty herein, he shall upon complaint to the Chief Officers of the Custome-House be strictly admonished of his Duty; but if the Clerk be found faulty therein, he shall upon complaint to the said chief Officers be presently discharged of his Service, and not permitted to sit any more in the Custome-House.

XX. The Lord Major, Commonalty and Citizens of the City of *London*, their Officers or Deputies for and touching Offices of *Package, Scavage, Baleage or Portage* of any Goods or Merchandize of Aliens, or their Sons born within this Kingdom or unfreemen, Imported or Exported into or out of the City of *London* or the Liberties or Ports thereof unto or from the parts beyond the Seas, for or concerning the receiving or taking of any Fee or Rates heretofore usually taken, for or in respect of the said Offices, or any of them might and may receive and take the same, any thing in the ACT of *Tunnage and Poundage*, or any other Act or thing to the contrary notwithstanding.

XXI. All ancient Duties heretofore lawfully taken by any City or Town Corporate their Farmers, Deputies or Officers, under the name of Town Custome or the like, for the maintenance of Bridges, Keyes, Harbours, Wharves or the like, shall and may be received and enjoyed as formerly, any thing in the said Act, or any other Act to the contrary in any wise *non obstante*.

XXII. The Under-Searcher or other Officers of *Gravesend* have power to visit and search any Ship outward bound, but shall not without just and reasonable cause detain any Ship under colour of searching the



Goods therein laden above 3. Tydes after her arrival at *Gravesend*, under pain of loss of their Office, and rendering damage to the Merchant and Owner of the Ship, and the Searcher or Officer of the Custom-House in any of the out-Ports having power to search and visit any Ship outward bound, shall not without just and reasonable cause detain such Ship under colour of searching the Goods therein laden above one Tyde after the said Ship is fully laden and ready to set sayl, under pain of loss of the Office of such offender, and rendering damage to the Merchant and Owner of the Ship.

XXIII. All Timber in balks which shall be of 8. inches square or upwards that shall be imported or brought from any part beyond the Seas into the Realm of *England*, Dominion of *Wales*, Port and Town of *Berwick*, or any of them, shall be rated according to the measure of Timber the foot square 3. *d.* for the value thereof, and according to that rate shall pay for Subsidy 12 *d.* in the pound according to Poundage; and all under eight inches square, and above 5 inches square, shall pay for Subsidy according to the Rates mentioned in the Book of Rates for middle Balks, and all of 5. inches square or under shall pay according to the rate of small Balkes.

XXIV. For avoiding of all oppressions by any the Officers of the Customes in any Port of this Kingdom, in exacting unreasonable Fees from the Merchant by reason of any Entries or otherwise touching the shipping or unshipping of any Goods, Wares or Merchandize it is ordered, That no Officer Clerk or other belonging to any Custom-House whatsoever, shall exact, require or receive any other or greater Fees of any Merchant or other whatsoever, then such as are or shall be established by the Commons in Parliament assembled; if any Officer or other offend contrary to this Order, he shall forfeit his Office and place, and be for ever after incapable of any office in the Custom-House.

XXV. All Fees appointed to be paid unto the *Customier*,

*mer, Comptroller, Surveyor, or Surveyor General* in the Port of London, for any Cocquets or Certificate outwards, shall be paid altogether in one sum to that *Officer* from whom the Merchant is to have his Cockquet or Certificate above in the Custom-House; and after the Merchant hath duly paid his Custome and Subsidy and other duties above in the Custome-house as is appointed above by the Book of Rates, he is to be master of and keep his own Cockquet or Certificate untill he shall ship out his Goods so entred when as he is to deliver the same to the *Head Searcher*, or his Majesties *Under-Searcher* in the Port of London or other Ports, together with the mark and number of his Goods.

XXVI. The *Officers* of the Custome-House for the time being shall allow and make unto all persons all such Moneys as are or shall be due unto them for the half Subsidy, and also the *Algier* Duty of Forraign Goods formerly Exported now due and unpaid.

The Duties and Sums of Money appointed to be paid by the Act of Tonnage and Poundage passed this Parliament, and by the Book of Rates therein mentioned, and no other shall be paid to his Majesties *Officers* during the continuance of the said Act upon Goods imported and exported, any Law, Statute or Usage to the contrary notwithstanding. Nevertheless the duty of *Prizage* and *Butlerage*, and the duty of 12 *d.* of every Chaldron of Sea-Coal exported from Newcastle upon Tyne to any other Port or Ports of this Realm, shall be continued.

XXVII. If any Merchant Denizen born shall happen to have his Goods and Merchandize taken by Enemies <sup>27 Ed. 2. Cap. 13.</sup> or Pyrats at Sea, or perished in any Ship or Ships, the <sup>12 Car. 2. Cap. 4.</sup> duties being either paid or agreed for, upon due proof thereof may ship out of the same Port the like quantity as shall amount unto the Custome without paying of any thing for the same.

If the Importer shall pay ready money, he shall be allowed 10 *per Cent.* for so much as he shall pay down.

XXVIII. Ships of Warr may be entred and searched <sup>14 Car. 2. Cap. 11.</sup> for prohibited and uncustomed Goods, and to bring them a shoar to the Kings Ware-houses, and the Com-

missioners or Head Officers may leave aboard Officers to look after them, that none be unladen or imbezelled, on pain of forfeiture of 100 l. And if Goods are concealed a shipboard after such time as the Ship is cleared, to forfeit 100 l; and then any with a Writ of Assistance out of the Court of Exchequer to go in the day time to any place, and enter and seize.

Goods conveyed secretly into Ships and carried away without paying the Subsidy and Duties, the Owners and Proprietors forfeit the double value, except Coals; which only forfeit the double Custom and Duty.

XXIX. There are allowances to be given Merchants for defective and damag'd Goods of 5 *per Cent.* on all Goods imported, and 12 *per Cent.* on all Wines to be allowed upon debentures; but if they shall ship out less then is in the Certificate, then the Goods therein mentioned or the value thereof shall be forfeited, and the Owner or Merchant shall lose the benefit of receiving back any of the Subsidy: and Goods shipped out are not to be landed again in *England*, on pain of forfeiture of those Goods.

All Goods coming out of or carried into *Scotland* by Land, shall pass thorough *Bermick* or *Carlisle*, and pay Customes as others, on pain of forfeiture.

And although that by this Act there are many allowances to be made, especially Merchants Denizens, yet the Parliament have ever been so careful as to bound the same, that is, it shall be to such who Traffick in Ships, (which are indeed the Bulwork of this Isle,) and therefore if such Merchandize shall be Transported out in any Gally or Carrack, they are obliged to pay all manner of Customs, and all manner of Subsidies, as any Alien; but in regard that Herring and Fish are, and have been accounted one of the principal Commodities, and generally finds a vent or Market in those Kingdoms and Countries that usually imploy such sort of Vessels, those Commodities may be Transported in them as well as Ships from any Port, or Harbour within this Realm, without paying any Subsidy or poundage for the same;  
but

but then such Fish must be taken by the Natives of the Kingdom and Transported by them, otherwise to pay as Aliens.

And whereas all manner of *Woollen Cloaths*, as well White as Coloured, unrowed, unbarbed, and unshorne, and not fully dressed, are prohibited by Law † to be Transported. His Majesty was graciously pleased to Grant unto *Frances Countess of Portland* as well for her Alliance in blood, as also for the many Crosses and Calamities which she hath suffered by the loss and Death of her nearest Relations, in his Majesty and his Royal Fathers Service, full power for one and thirty years, to Licence the Transporting of such goods, *Non obstante* such prohibitory Laws, the which is now put in Execution by agreement, and Composition with her Deputies at the Custome House.

† Per Letters  
Patents bearing  
Date 24. of  
Feb. 27 Car. 2.

## CHAP.



## CHAP. XVI.

## Of the Right of Passage, of imposing on the Persons and Goods of Strangers for passage thorough the Seas.

- |                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of the Right of harmless Utility excepted tacitly in the primitive dominion of things.</p> <p>II. Where Passage ought to be open, and where the same might be implicitly provided for in the first institution of Property, and under what Cautions.</p> <p>III. Of the same right as in re-</p> | <p>ference to Goods and Merchandise.</p> <p>IV. If Passage admitted, whether Tribute or Toll may be imposed.</p> <p>V. Where Imposition may lawfully be laid, and for what causes; And of the Kings Prerogative in that Point.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **H**AVING in the foregoing Three Chapters observed somewhat of *Customes* and *Impositions* laid *de facto* within the Realm, and that by Acts of Parliament, or the consent of the Three Estates, it may not seem amiss to enquire what Imposition the King of his Prerogative may impose on Strangers and their Goods passing thorough his Territories and Seas; and in that to enquire of the same as in reference to Persons and Goods.

Beside the right of necessity which seems to be excepted in the first Institution of Dominion, there is another Relique of old Communion, namely, the Right of harmless Utility; For why should not one (saith \* *Cicero*) when without his own detriment he may communicate to another in those things that are profitable to the Receiver, and to the Giver not chargeable. Therefore *Seneca* † saith it cannot be called a benefit to give leave to another to light his Fire by yours. We read in *Plutarch*

\* *De Offic. 1.*

† *De Benef. 4. Symp. 7.*

*Plutarch* it is not lawful to spoyl our Victuals when we have more then enough, nor to stop nor hide a Fountain when we have drunk our fill; nor to abolish the Way marks either by Sea or Land which have been useful to us: So a River as a River is proper to that Prince or that Lord, or that People within whose Dominion or Royalty it runs, and they may make a Mill on it, (unless it be Common as a High-way) and may take what Fish the River yields, but the same River as a running Water remained common as to drinking or drawing of it, notwithstanding as to the Fishing and the like it may be peculiar.

*Leg. quendam  
D. de rer. di-  
vis.*

II. Again, Lands, Rivers, nay if any part of the Sea be come into the Dominion or Property of any People, it ought to be open to those that have need of Passage for just causes, namely, being expelled by force out of their own Country they seek void places, *Bald. 3. cons.* or because they desire Commerce with remote Nations; 293. The reason here is the same which hath been mentioned \* elsewhere, because Dominion might be introduced with a reception of such use † which profits these, and hurts not those, and therefore the Authors of Dominion are to be supposed willing rather to have it so, *Lib. 1. Cap. 1. §. 3. & 4. Serv. ad. 7. An. lit. tuss. yagamma innocuum cujus vindictio, ait, Nulli possit nocere.* then that such a restriction which perhaps in the end may destroy Society: however this hath its quantum, for though harmless Passage may be excepted in the first Institution of Dominion; yet that is to be understood when leave is granted: and though fear of the multitude which is to pass cannot take away that Prince his Right thorough whose Territories or Seas they go; yet it follows as naturall that in the Institution of such liberty that Prince or People may provide, and if they have any probable or any reasonable cause interdict their passage *Plutarch relates; That Cimon going to ayd the Lacedemonians, led his Army thorough Co-*

*rinth, being reprehended by the Corinthians for not asking leave of the City: Nam et qui fores alias pulsas, non intrare nisi domini permissu: ac vos inquit, Cleonorum & Megarensum fores non pulsastis sed perfregistis, consentes omnia patere debere plus valentibus. However Passage is and must be requested; But in lieu of that, the striking of the Flag, and lowering the Top-sail is in token of that Right due to His Majestie in the British Seas.*

till security or Hostages are pledged for their peaceable passage, nay without declaring their reason may interdict them absolutely any manner of passage, if there be any other way to pass in safety ; And therefore at this day by the Laws of *England*, the King may interdict any Nation or People whatsoever to pass through his Seas without leave first obtained to that purpose, and may visit all Ships, be they of War or of Traffick that shall occur or be in the same.

*Vide Lib. 1.*

*Chap. 4.*

*Vide Mr. Selden Mare Clausum.*

† That is by the Lawes of Nature, but the Lawes of Nations and those of Countries may.

\* In Legat Cajam.

*Quomodo autem satis dignis quis explicet facilitatem ad mutua Commercium, nobis datam? Ne enim itineris longitudo impedimentum aliorum ad alios commutatibus ad ferret, breviorum viam, mare scilicet, ubique terrarum disposuit Deus, ad mundum tanquam unum domum commu-*

*niter inhabitantes crebro nos invicem inviserimus; & apud se nata quisque alteri communicans vicissim, commode acciperet res apud illum abundantes; ac sic exiguum tenens terre partem, ita tanquam si teneret universam, frueretur ejus quæ ubique sunt bonis. Licet itaque; nunc tanquam in communi mensa convivarum unicuique ea quæ sibi opposita dare alteri longius accumbenti, ac contra quæ apud ipsum sunt accipere manum tantum extenta.*

III. Nor is passage onely due to Persons but to Merchandize also, for no man hath Right † willfully to obstruct the way of Commerce to any Nation with any other that is remote ; because the permission of Trade is for the interest of humane Society, and is not discommodious to any one, and to that purpose *Pbilo* speaks ;  
\* *On the Sea all Ships of burden safely pass according to that right of Commerce which is between all Nations arising from the desire of Natural Society, while they supply one another mutually which the one wanteth, and the other can spare ; for envy hath never invaded either the whole world, or the greater parts thereof. And Plutarch speaking thus of the Sea, This Element hath made our life sociable and perfect, that otherwise would be wild and without correspondence ; it supplies our wants with mutual ayd, and by exchange of things needful it procures fellowship and friendship. And the wisdom of God is highly to be admired, who hath not granted all things to every Land, but hath distributed his gifts to severall Countries; that men having need of one another might maintain Society for their Common good, therefore hath he endowed Man with knowledge and understanding to invent and build Ships, to govern and guide them by those Lamps of*

Heaven and other Instruments of his Divine Wifdome, enabling thereby the Merchant to convey to all what any place affords : according to that of the Poet,

*What Nature any Land denied,  
By Navigation is supplied.*

But as the Sea is free and open for Traders, yet nevertheless the Passengers are subject to such Restrictions, Laws and Ordinances as those Sovereign Princes shall make of force in those places where they have an accession of Property or Sovereignty.

I V. But admitting that such free Passage may be granted as above, whether Tribute may be imposed by him that Rules the Land, upon Merchandize passing by Land or by River, or by part of the Sea, which may be called an Accession of the Land, (that is, the place thorough which they pass, is as much under the absolute Jurisdiction of the Prince, as the very Land it self;) Certainly whatsoever Burdens have no relation to the Merchandise, no equity suffers the same to be imposed on the same; neither can Poll-money put on the Inhabitants to sustain the Charge of the Commonwealth, be exacted of Passengers. *Vide Strabo, lib. 8. & lib. 16.*

V. Nevertheless, if either to secure the Passengers Goods and Vessels from Pyrats and others, or for the Erecting of Beacons, Light-Houses and other Sea-Marks, and such like, \* there indeed some compensation may be laid upon the Commodities or Ships passing thorough, so that the measure of the cause be not exceeded; Or as my Lord Coke observes in the case of the Halage money, † It be reasonable; for upon that depends the Justness of Tributes and Toll: And upon those Reasons the *Venetian* in the *Hadriatique*, the King of *Denmark* in the *Baltique* Sea, does demand the same; And the King of *England* may do the like in the Chambers of his Empire, and that by his Prerogative; for the same is not so much compulsory to any to pay, but to them that will take benefit of such accommodation. *Vide the Plea of the Venetian Lawyers at the end of Mr. Selden's Mare Clausum.*

*Strabo*



*Pereg. l. i. Ne  
jure Fisci,  
Cap. i. num.  
27.*

*Strabo* relates, That the *Corinthians* even from the most ancient of times received Tribute of the Commodities, which to avoid the compassing of *Malea* were carried by Land from Sea to Sea. So the *Romans* received a price for the passage of the *Rhine*. But this Right of imposing on Ships and Goods passing thorough some Territories is found cruel, especially when they must pass thorough the Territories of a powerful and fierce People, then it is heavy to the Merchant to compound, for it's often done on hard and grievous terms.

---

*The End of the Second Book.*

---

# CHAP. I.

## Of Freedom, Bondage, Slavery, Exile, and Abjuration.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of Freedom by the Law of Nature, and of Bondage, Slavery, or Captivity introduced by the Law of Nations.</p> <p>II. Of the Actions that subject Man to Bondage.</p> <p>III. Of the Dominion over Slaves, Bond-men and Captives.</p> <p>IV. Of the Cause, or Reason of such Dominion.</p> <p>V. That this Right or Dominion, was not a Law universal.</p> <p>VI. Of Bondage or Slavery, where discontinued by the Christians, and Mahomitans.</p> | <p>VII. Of a Servitude at this day, standing with the Laws of a Christian Commonwealth.</p> <p>VIII. Of Manumission and Freedom by the Hebrew and Roman Law, and by the Laws of England.</p> <p>IX. Of Disfranchising the several ways.</p> <p>X. Of Abjuration and Exile, and what operation it hath.</p> <p>XI. Of Freedom in Cities and Corporations, in reference to Merchants, Traders and Forreiners.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **I**N the primitive state of Nature, no men were Servants; yet it is not repugnant to natural Justice, that by the Fact of man, that is, by Covenant or Transgression, Servitude should come in; therefore Servitude is brought in by the Laws of Nations.

II. Hence it is, That those that will yield up their persons, or promise Servitude, are accounted Slaves; so likewise all that are taken in Publick War, and brought within the Guards of their Conquerors; nor is transgression necessary, but the Lot of all is equal, after the War is begun, even of those whose ill fortune subjected them to be deprehended within the Enemies Bounds; nor are they Servants only themselves, but all their Posterity for ever.

III. The Priviledges of this Right or Dominion, are infinite; since there is no suffering which may not be imposed on such, nor work which may not every way be extorted from pereque gentes, ait Cajus animadvertere possumus dominis in servos vite necisq; potestatem fuisse. Co. Instit. fo. 116. b. B. l. 1. D. de his qui sui sunt juris institit. de his qui sui.

L. libertus § 1. D. de statu hominum. Fiunt etiam servi liberi homines Captivitate de jure gentium. Bracton l. 1. c. 6. Littleton Sect. 175. l. Postlim. § 1. D. de Captiv.

L. & servorum § 1. D. de statu hominum. Apud omnes

them: So that even the Cruelty of Masters became almost unpunished, till the Municipal Laws of Countreys set Bounds to their rigour and power.

Nor are the persons become theirs only that have the power of them; but also all that they have; for such unhappy persons *can have nothing of their own.*

*Leg. Cornelia  
ff. de Testam.  
& Leg. Cornel.  
ff. de vulg.  
Substit.*

Hence it was, That that excellent Law in favour of such, was introduced by the *Romans*, called *Legis Cornelia*, which was when a Captive, *intra presidia hostium*, dyed in his Captivity; if he had made a Will, before his being taken Captive; yet such a Captive should in favour of such Will, and for the upholding of the same, be feigned to be dead, and *in puncto temporis*, immediately before such his being taken Captive; and so by that Legal Fiction of death, his Will became firm and valid, as if he had really dyed without ever being taken by the Enemy. So likewise if one had been made a Slave; yet if he had returned out of his Captivity, that for the preservation of his Right and Propriety, he was feigned as if he had never been absent, and was immediately redintegrated into his pristine Estate and Condition.

*In jure Possi-  
minii Leg. re-  
tor. & l. in  
beko. § 1. & l.  
bon ff. de Capt.  
& § 4. D. qui-  
bus mod. jus  
patr. solvit.*

And Fortescue conceives, it began *ab homine & pro vito introducta est servitus* *E sed libertas a Deo hominis indita nature quare ipsa ab homine sublata semper redire gliscit, ut facit omne quod libertate naturalis privatur.* Cap 42.

IV. Now all these Privileges and Immunities were introduced by the *Laws of Nations*, for no other reason, but that their Captors, tempted by so many Immunities, might willingly abstain from that cruel rigour of slaying their Prisoner.

Hence it is, That the Captors Dominion is extended to the Children; for should such *use their highest Right*, they would not be born; but Children that are born before that calamity, and were never taken Prisoners, are freed from that unhappy state.

V. Though this Dominion or Right was generally acquired in most Nations; yet was not the same a *universal Law*; for amongst the *Jews*, refuge was granted to Servants who fell into that calamity by no fault of their own. And the state of *Christendome* at this day is apparent, That Prisoners taken in War, do not become perfect Slaves, as of old; but only remain in the Custody of the Captor, till *Ransoms are paid*, whose valuations are generally at the pleasure of the Conqueror; yet persons of Eminent Quality, as *Generals*, and the like; such persons, \* if taken by a common Soldier, yet he has no advantage

\*Artic. of war  
Anno 1573.  
for His Maje-  
sties Forces,  
Artic. 24.

advantake by the same; for such a Captive is become Prisoner immediately to that Prince or State under whom the Captor served: But if it be the Lot of an *Inferior Soldier* to become a Prisoner of War, he is then become absolutely the Captors to dispose of; but he wanting those necessaries in the Field for himself, which he ought to provide for his Prisoner, commonly waives that Interest, and generally yields him up as a Prisoner of War to be disposed of by that Prince or State under whom he served.

VI. Slavery in *Christendome* is now become obsolete; and in these latter ages the minds of Princes and States having as it were universally agreed to esteem the words *Slave, Bondmen, or Villain*, barbarous, and not to be used; and that such as are taken in War between Christian Princes, should not become Servants, nor be sold, or forced to work, or otherwise subjected to such servile things; but remain till an exchange of Prisoners happen, or a Ransom paid, as afore: Nay, the very *Turks* and *Mahomitans* at this day generally observe this among themselves, not to make Slaves of those of the *Mahomitan Religion*, though taken in War; and that which is most to be admired, a Christian fallen into that miserable state, renouncing his Religion, and becoming a *Mahomitan*, immediately upon his Circumcision, obtains his Freedom; with a Recompence: The Cruelty of those Infidels to those unhappy Persons, together with the reward of renouncing, hath given cause to many a brave Person to become *Renegade*; the which being considered by the Parliament in *England*, they made a \* provision for such miserable Persons as should be taken by *Turkish* and *Moorish* Pyrats.

But in l. nam.  
& Jerr. D. de  
Reg giftis.

In the Wars  
of the French  
with the Spaniards in Italy, a Horseman was Ransomed for the 4th of his yearly Pay.  
Vide Maria  
na. lib. 27 18:  
And in the last Belgick War, the English dismiss all the Flemings that were taken in War, as they did the like with those of England An. 1675.

*Quam non sit ardua virtus servitium fugisse manu*, it is none of the hardest Vertues to embrace Death to avoid Slavery. \* 16, 17. Car. 2. Cap. 24. It's expired; but His Majesty is yet graciously pleased to consider the state of his poor Subjects, and thereupon hath appointed a Committee of the Lords of the Privy Council, for the managing of that Affair.

VII. Though *Slavery* and *Bondage* are now become discontinued, in most parts of *Christendome*; yet there may be a Servitude which may amount to a labour or suffering equal to that of Captives, the which may be justifiable; for men either through Poverty, and the like, may oblige themselves by Contract for maintenance to a Servitude likewise at *Virginia*, and other Plantations;

† Yet some of the English Merchants, &c others, at the Canaries, do here support this unnatural Custom. So



Exod: 21. 26,  
27.

Vide the Statute of 5 Eliz. who hath provided the like remedy in other places.

Dent. 15: 13.

The Russians having seized on the Countrey of Illyria, and made it their own by Conquest, their Victory pleased them so highly, that thereupon called themselves by a new Name, *Slave*, which is in their Language *Glorious*; but in after time, (that warmer Climate having thawed their Northern hardness, and not ripned their Wits) when they were Conquered, the *Italians* in derision calling them; (being then their Bond-men) *Slaves*. Sir Walter Rawleigh, lib. 2. Cap. 17. § 8.

that's perpetual, i.e. for life, and so for years; but at this day there is no Contract of the Ancellor can oblige his Posterity to an Hereditary Service; nor can such as accept those Servants, exercise the ancient Right or Dominion over them, no nor so much as to use an extraordinary rigour, without subjecting themselves to the Law: If an Eye or a Tooth had been struck out injuriously, by the *Hebrew Law* Freedom was immediately due; and by the *Greeks*, if Servants had been ill treated, it was lawful for them to demand a *Sale of themselves to others*. At *Rome* the Statues became Sanctuaries for Servants to implore the help of the Governours, against rigour, hunger, or any other intollerable injury inflicted by their Masters; and even in *London* at this day, Servitude amongst the many Causes, as not Inrollment of the Indentures, not Instructing in the Art, want of necessaries *infra etatem* 14, &c. Cruelty, Hunger, Rigour, immoderate Correction, and the like, are Causes sufficient on a *Monstrans*, or Petition to the Lord Mayor and Aldermen, to dissolve the Contract, though under Hand and Seal, and to Decree all, or part of the Dowry, or some given (if any) to the Servant; and if cruelty hath been in the case, to expose the Master to answer dammage to the Party Servant.

VIII. *Ulpianus* observes after, that by the Laws of Nations Servitude came in, then followed the benefit of Manumission. By the *Hebrew Law*, after the expiration of the time agreed on, the Servant was to be manumitted, and that not without Gifts, like *Londons* Freedom; by the Custom of which the Master is always at the charge of Cloathing, and discharging the Chamberlains Fees. By the *Roman Law*, every Son was in such subjection to his Father, that before he could be released of this subjection, and made Free, he should by an Imaginary Sale be sold Three times by his natural Father, to another man, who was called by the Lawyers *Pater Fiduciarius*; that is, a Father in Trust, and then be bought again by his natural Father, and so manumitted by him, and then he became Free: This form of setting Free was by them called *Emancipatio: Freedom*. (that warmer Climate having thawed their Northern hardness, and not ripned their Wits) when they were Conquered, the *Italians* in derision calling them; (being then their Bond-men) *Slaves*. Sir Walter Rawleigh, lib. 2. Cap. 17. § 8.

That

That Roman Darling was to be obtained Three ways :

1. By Birth, \*both, or at least one of their Parents being Free; and such were called *Cives Originarii*.

2. By Gift and Co-optation, when the Freedom was bestowed on any Stranger or Nation, and they were termed *Civitate Donati*: And so we read, that *Cæsar* took in whole Nations into the Freedom.

Lastly, By *Manumission*, which was thus; when as the Servant was presented by his Master before the *Consul* or *Prætor*; the Master laying his hand upon his Servants head, used this form of words, *bunc liberum esse volo*; and with that turning his Servant round, and giving him a Cuff on the Ear, he did *emittere servum e manu*; The *Prætor* laying then a certain Wand, or Rod, called *vindicta*, upon the Servants head, replied in this manner, *Dico eum liberum esse more Quiritum*; then the *Lictor* or *Serjeant* taking the Wand, did strike the Servant on the head, and with his hand he struck him on the face, and gave him a push on the back; and after this he was Registered for a *Freeman*: This being performed, the Servant having his head shaven purposely at that time, received a Cap as a Token of Liberty.

*Tertullian* observes, That at this time of their *Manumission*, the Servants received from their Masters a White Garment, a Gold Ring, and a new Name added to their former.

By the Laws of England, every Subject Born within the Kings Dominions, is a *Freeman* of this Realm, as appears by the *Grand Charter*, Cap. 14: yea, though he be a *Bond-Slave* to a Subject: \* But a *Stranger* Born, is no *Freeman*, till the King have made him a *Denizon*, in whose Power alone, without the help of any other, one may be made Free.

To be a *Freeman* of the Realm, the place of Birth, is held more considerable than the Quality of the Person: Yet by the opinion of *Hussey Chief Justice*, in 1 R. 3. fo. 4. And in *Calvins Case* of the *Post Nati*, it is held for Law, That if *Ambassadors* of this Realm have Children Born in France, or else where; the Father and Mother being Natural Born Subjects, the Children are Free of the Realm of England: But if either the Father or the Mother of

*Vide leg. 12. Tabuli Sigonius de jure Roman. l. 1. Cap. 10. \* Justin. Inst. l. 1. tit. de Iugeniis vide Franc. Silo in Cattilin ar. 4.*

*Goodwyn Antiq; Rom. 4. 33, 34.*

*Tertullian de de resur. Carn.*

*Magna Charta Cop. 14. \* As to some things Vide postea § 2.*

*1 R. 3. fo. 4.*

such Children were an *Alien*, then are not those Children Free.

Bacons Case,  
1 Cro. 4. fo.  
437.  
Stephens Case  
2 Car. in the  
Dutchy.

But the Law is conceived to be otherwise at this day. The Statute *de Natis ultra mare* 25 E. 3. Cap. declares, the Issue Born of an *English-man*, upon an *English-woman*, shall be a *Denizon*; for upon the Construction of this Statute, it has been adjudged more than once, That if an *English-man* marry a *Forciner*, and has Issue by her Born beyond Seas, the Issue is a *Natural Born Subject*.

IX. *Disfranchising* by the Romans, called *Capitis diminutio*, was Three fold, *Maxima*, *Media*, & *Minima*; the least degree was, when the *Censors* pulled a Man from a higher Tribe down to a lower, and less Honourable; or when by any *Censure*, they disabled a man from suffraging or giving his Voice in the publick Assemblies; such as were thus in the last manner punished, were termed *Ærarii*, and *in ærarios veluti, quia omnia alia jura Civium Romanorum præterquam tributi & æris conferendi amiserunt*. Gellius relates, That P. Scipio *Nasica*, and M. *Pompilius*, being *Censors*, taking a view of the *Roman Knights*, observed one of them to be mounted on a lean starvling Horse, himself being exceeding fat; whereupon they demanded the Reason, why his Horse was so lean, himself being so fat? his Answer was, *Quoniam ego inquit, me curro; statius mens servus*.

First granted  
17 Joh. Reg.  
revived 9H. 3.  
and since confirmed above  
30 times.

\*The Lord  
Morley and  
Monteagles  
Case; for the  
supposed Murder of one  
Hastings, 15  
Car. 2.

By the Ancient Laws of *England*, and by the *Great Charter*, no *Freeman* shall be taken or Imprisoned, but by the Lawful Judgment of his Peers (that is, by Jury, Peers for Peers, ordinary Juries for others who are their Peers) or by the Law of the Land; which is always understood by due process of the Law, and not the Law of the Land generally; for otherwise that would comprehend Bond-men, (whom we call Villains) who are excluded by the word *Liber*; for such Bond-men might be Imprisoned at the pleasure of his Lord; but a Free-man neither could, nor can, without a just Cause; nor does the Priviledge extend to private Actions, or Suits between Subject and Subject; but even between the Sovereign and the Subject: Hence it is, that if a Peer of the Realm be *Affaigned* at the Suit of the King for a Murder, he shall be tryed by his \*Peers, that is by the Nobles. But if he be appealed of Murder upon the prosecution of a Subject,



Subject, his Tryal shall be by an ordinary Jury of 12 Freeholders; and as the *Grand Charter* did, and does protect the Persons of Free-men; so likewise their Free-hold: For by the same *Charter* it is declared, That the King, or His Ministers, shall out no man of his Free-hold, without reasonable Judgment; and so it was rul'd upon a Petition in Parliament, setting forth, that a Writ under the Privy Seal, went to the Guardian of the Great Seal, to cause Lands to be seized into the Kings Hands; and that thereupon a Writ issued forth to the Escheater, to seize against the form of the *Great Charter*; upon debate of which, the Party had Judgment to be restored: the greatest, and most Explanatory Act, which succeeded in point of Confirmation, was that of *Edward the 3d.* the words are, That no Man, of what Estate or Condition soever he be, shall be put out of the Lands and Tenements, nor taken, nor imprisoned, nor disinherited, nor put to death, without he be brought to answer by due process of the Law; that is, by the Common Law.

2. *Diminutio media*, was an Exilement out of the City, without the loss of ones Freedom; the words of the Judgment or Sentence were, *Tibi aque & igni interdico*.

3. *Diminutio maxima*, was the loss both of the City, and the Freedom, and by his Judgment or Sentence was obliged and limited to one peculiar Country; all other places in general being forbidden him.

There was a Fourth kind of Banishment, Disfranchising, called *relegatio*; which was the Exilement only for a season, as that of *Ovid's*. \*

The Laws of England in this matter have some resemblance with those of the Romans; for *Bracton* observes 4 Distinctions.

1. *Specialis, hoc est interdictio talis Provinciae, Civitatis, \* Burgi aut Villa.*

2. *Generalis, Interdictio totius Regni, & aliquando est,*

3. *Temporaria, pro duobus, tribus, quatuor, aut pluribus annis, aut &c. —*

4. *Perpetua, pro termino vitae, & exilium est aliquando ex arbitrio principis sicut in exiliando Duces Hertfordiae, & Norfolkiae, per Regem Richardum Secundum, & aliquando per Judicium Terrae, ut fit in Casu Piers de Gavilston, & etiam in Casu Hugonis de le Spencer Junioris, qui ambo fuerunt*

10 E. 4. 6. 33  
Hen. 8. Bro.  
title tryals.

8 Ed. 3. Rot.  
Parl. m. 7.

28 E. 3. Cap. 3.

\* Adde quod  
edictum quam-  
vis immitte  
minax;

Atamen in  
paene nomine;  
lene fuit: Quip-  
pe relegatus,  
non exul dicor  
in illo Ovid. de  
Trist. li. 2. Elig.

In London the  
same is done  
by exhibiting  
an Informati-  
on in the name  
of the com-  
mon Serjeant,  
in the Mayors  
Court there a-  
gainst any Ci-  
tizen that shall  
justly deserve  
so great a di-  
honour.



\*17 Car. 2.  
Cap. 2.

*fuertunt exilit' per Judicium in Parlamento.* So likewise was that of the Banishment of the Earl of *Clarendon*, who dyed beyond the Seas. \*

Mr. Selden observes, That in the time of King Henry the First, and of other Kings, both before and after him, that if any man accused of a Capital Crime done

at Sea, being publickly called Five times by the Voice of the Cryer, after so many several days assigned, did not make his appearance in the Court of Admiralty, he was Banished out of *England*; & *de mere appartenant au Roy d'Angleterre*, for 40 years more or less, according to his offence. *Mar. Claus. fo. 12.*

X. *Abjuration*, was also a Legal Exile, by the Judgment of the Common Law, as also by the Statute Law; and in the Statute of *Westm. the second Cap. 35.* He which Ravishes a Ward, and cannot render the Ward unmarried, or the value of his Marriage, must abjure the Realm; and this is a *General Exile*: And by the Statute made 31 *Ed. 1.* Butchers are to be abjured the Town, if they offend the Fourth time, in selling measled Flesh; and this is a *Special Banishment*.

A man Exil'd, does forfeit these things.

1. Hee loofeth thereby the Freedom and Liberty of the Nation out of which he is Exiled.

2. He forfeits his freedom in the Burrough or City where he was free; for he which forfeits the Freedom of the whole Realm, forfeits his Freedom in every part.

34 E. 1: 1 H. 4.  
Bulstrode, 3. part  
188.

3. The Law accounts him as one *dead*; for his Heir may enter, and so may his Wife enter into her own Lands, and may sue an Action as a *Feme sole*.

15 E. 3. Fitzb.  
Pétition pl. 2.

4. He shall forfeit those Lands which he shall purchase in the Realm, *during his Banishment*; for he during his Banishment, is as much disabled to purchase, as an Alien; for *fit alienigena* by his Banishment; and he is observed to be in a worse Condition than an Alien; for he is marked with *Indignatio principis*. 'Tis true, he cannot forfeit neither Title of Honour, nor Knighthood, nor the Lands he had before Exile, unless there be special Sentence or Judgment, as that of the *Spencers*.

If the Father be in Exile, this hinders not the Freedom of the Son; for the same is not a thing descendable; for should it be so, then the Banishments of the Father would make a Forfeiture of the Freedom; but the Son has this Freedom by his own Birth, as a Purchase, and not by the death of his Father by descent; Like the Case where *J. S.* hath

bath many Children, and then he confesseth himself a Villain to J. D. in Court of Record; yet his Children formerly Born, are Free-men, and no Villains; the Reason is, because they were Free by their own Births; but the Inheritance is Inthralled, because it is to come to the Heir by descent.

XI. A Free-man of a City or Burrough, may be made divers ways, as my Lord Cooke observes,

1. By Service.
2. By Birth, by being the Son of a Free-man.
3. By Purchase, or Redemption.

At Bristol by Marriage.

8. Re. fo. 126.  
Case City of  
London.

Sir John Davies in his *Irish Reports*, observes the same for Law. St. Paul was born at Tarsus in Cicilia, which was under the obedience of the Romans; by vertue of which he challenged the priviledge of a Roman Citizen; but it was accounted no more than a National Freedom; like that of Calvin, who claimed the general Freedom of an English-man, being born in Scotland, but under the obedience of the King of England; but that Challenge made not St. Paul Free of the Private Customs, Priviledges, and Franchises of Rome, no more than Calvins Birth made him a Free Citizen of London, to the particular Customs of that City.

The King, by his Letters Patents, cannot make one a Free-man of London; † yet he may thereby make him a Free-man of his Kingdom.

King Edward  
the 3d. granted  
to John  
Falconet de

Luca an Apothecary of the City of London, quod ipse omnibus libertatibus quas Civis Civitatis predictæ habent in eadem Civitate alibi infra Regnum Angli nostrum habeat gaudeat & utatur &c. Rot. Pat. 32 E. 3. in the Tower; yet it was held, That this Grant did not make him a Free-man of the City, for it cannot be attained, but by one of those ways. † Case of the City of London, Co. B. Report.

If one be Born in a City, of Parents that are not Free, the Child hereby is no Citizen by Birth; and if one be born of Free Parents out of the place of Priviledges, as London, &c. he yet is a Free-man by Birth; yet in the Charter Granted to Yarmouth, the words were concessimus Burgensibus de magna Yarmutha de Villa predicti Oriundis, that they should have such and such Liberties: So that Special words may alter the Case.

London had many Royal Franchises granted them from time to time, and were often by former Kings successively confirmed,

Confirmed by  
*Magna Charta*  
cap. 9.  
*Rott. Parl.*  
7 R. num. 37.

9 E. 2. cap. 2.  
29 E. 3. cap. 2.  
27 E. 3. cap. 1.  
7 H. 4. cap. 1.

9 H. 4. t. his  
Act is not  
printed.

confirmed, nor wanted they a share when the great Charter was granted, to have their ancient liberties secured, nor were the succeeding Princes slack in their Royal grants and confirmations; but especially *Richard the Second*, who in Parliament granted and confirmed to them all their ancient customs and liberties, with this clause *Licet usi non fuerint vel abusi fuerint*; and notwithstanding any Statute to the contrary, amongst the number of their many Privileges, the freedom of the same was accounted of no small importance, since in divers Parliaments it was very much aimed at, and endeavoured to be impaired; but at last they obtained a most gracious and Royal Confirmation in Parliament of their ancient liberties, amongst which it is declared that no Merchant, being a Stranger to the Liberty of the said City, should sell any Commodities within the Liberty of the said City to other Merchant-Strangers; nor that such Merchant-Stranger should buy of any other Merchant-Stranger such Merchandize, within the Liberty of the said City, without forfeiture thereof; saving that any Person, Lord, Knight, &c. may buy within the Liberties of any Merchant-Stranger Merchandizes in gross for their own use, so that they do not sell them again to any other. And as this City by Custom may pre-clude any Person, not being free of the same, to sell in such manner upon such pain; so any other City, which are Burroughs or Cities by prescription within this Realm, may have the like Custom, and the goods sold or bought by such, may be subjected to forfeiture, but the same cannot be good by Charter or Grant.

A compleat Free-man is such a one as hath challenged his freedom, and taken the Free-mans Oath, and is admitted into the Society and Fellowship of the Free-men, Citizens, and Burgeses, otherwise he hath but a bare right to his freedom.

*James Baggs*  
Co. 11. Rep.

## CHAP. II.

### Of Aliens, as in relation to their Estates real and personal.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of an Alien his ability and disability in the taking and enjoying of Estates real and personal.</p> <p>II. Of his capacity in purchasing, and disability to transfer by an hereditary descent.</p> <p>III. Of the rules of descents, according to the Laws of several Countreys.</p> <p>IV. Of descents according to the rules of the Common Law of England lineal and collateral.</p> <p>V. Of Impediments in one that is not the medius antecessor.</p> <p>VI. Of Impediments in one that is the medius antecessor lineal and collateral.</p> <p>VII. Of the Statute of Natis ul-</p> | <p>tra Mare, and of issues born beyond the Seas.</p> <p>VIII. The Lord Cokes opinion, that if an Alien has issue two Sons Denizens, the one purchases Lands, and dyes, the other cannot inherit them, debated and refuted.</p> <p>IX. Of Foreign births, which do not create a disability.</p> <p>X. Of Aliens not disabled by Law to bring either real or personal actions.</p> <p>XI. Of Office that must entitle the King to an Aliens Estate.</p> <p>XII. Of some particular immunities and other matters relating to an Alien.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**A**N Alien is one born in a strange Countrey, under the obedience of a strange Prince and State, and out of the ligeance of the King of England, and can have no real or personal action for or concerning Lands; and therefore if he purchase Lands, Tenements, and Hereditaments to him and his Heirs, albeit he can have no Heir, yet he is of capacity to take a fee-simple, but not to hold, for the King upon Office found shall have it by his Prerogative. So it is if he purchase Lands and dyes, the Law doth cast the free-hold and inheritance upon the King. *Calvinus case*  
*Go. lib. 7.*  
*Yelverton 199*

But if he purchase or take a Lease for years of a House or Ware-house, which is for the accommodating him as a Merchant-stranger, whose Prince or State is in League with ours, there he may hold the same, for that the same is incident to Commerce.

And in that case if he departs and relinquishes the Realm, the King shall have the same, so it is, if he be no Merchant.

The



*Pasce 29 Eliz.  
Sir James  
Crofts case by  
the Judges.*

The like Law is if he takes a Lease of Meadows, Lands, Woods, or Pastures, the King shall have the same; for the Law provides him nothing *but a habitation to Trade and traffique in as a Merchant.*

II. Though he may take by purchase by his own *Contract*, that which he cannot retain against the King, yet the Law will not enable him by an Act of its own, to transfer by hereditary descent (the Alien dying, his issue a *Denizon* born) the Land will not descend, or to take by an *Act in Law*, for the Law *Quæ nihil facit frustra* will not give him an inheritance or free-hold by an Act in Law, for he cannot keep it.

Therefore the Law  
will not give him

1. By descent.
2. By courtesy.
3. By Dower.
4. By Guardianship.

And in respect of that incapacity he resembles a Person *Attaint*, but with this difference.

The Law looks upon a Person *attaint* as one that it takes notice of, and therefore the eldest Son attainted over-living the Father, though he shall not take by descent in respect of his disability, yet he shall hinder the descent to the younger.

*32 E. 3.  
Corinag. 5.*

But if the eldest Son be an *Alien* the Law takes *no notice of him*, and therefore as he shall not take by descent, so he shall not impede the descent to the younger Brother: As for instance, if there be three Brothers, the eldest an Alien, the other two naturalized, and the middle Brother purchase, and dyes without issue, the younger Brother shall have the Lands.

*3 Report Rat  
liffs Case.*

III. Concerning the Rules of descents we are not to govern our selves therein by the general notions of *love or proximity of nature*, but by the *municipal* Ltws of the Countrey wherein the question ariseth; for the various Laws of divers Countreys have variously disposed the manner of descents, even in the same line and degree of proximity: For instance, the Father certainly is as near of kin to the Son, as the Son is to the Father, and is nearer in proximity than a Brother, and therefore shall be preferred as next of kin in administration to the Sons Estate.

According to the *Jews*, for want of issue of the Son, the Father

Father succeeds, excluding the Brothers, and that hath been the use and construction of the *Jewish Doctors* upon *numb. 27. 9.* but the Mother was wholly excluded.

*Seldeni de successione a-  
pud Hebraeos  
cap. 20.*

2. According to the provision of the *Greeks* for the succession or exclusion of the Father, is left doubtful.

3. By the *Roman or Civil Law*, according to the estimation of the *twelve Tables*, the Father succeeded in the purchase of the Son for want of issue of the Son, under the title *proximit agnato*, and so was the use; but my Lord *Cook* supposes the contrary.

*Comment. on  
Littleton fo. 5.  
68 tit. 3.*

But taking the whole Institution of *Justinian*, the Son dying without issue, his Brothers, Sisters, Father, or Mother do succeed him as well to Land as goods, in a kind of *Copercenary*.

*8 tit. 1. de ha-  
reditibus ab in-  
testato venientibus.*

4. According to the Laws of *Normandy*, (which in some things have a cognition with our Law) his Brothers are preferred before the Father (if the Son dye issueless,) but his Father before his Uncle.

*Customs Nor-  
mand. c. de-  
scheancres.*

5. According to the Laws of *England* the Son dying sans issue, or Brothers, or Sisters, the Father cannot succeed but it descends to the Uncle.

IV. There be two kinds of descents, according to the Common Laws of this Realm.

1. *Lineal* from the Father or Grand-father, to Son or Grand-son.
2. *Collateral or transversed*, as from Brother to Sister, Uncle to Nephew, and *e converso*: And both these again of two sorts.

1. *Immediate*, as in lineals from Father to Son.

2. *Mediate*, as in lineals from Grand-father to Grand-child, where the Father dying in the life time of the Grand-father, is the *medium differens* of the descent.

*Grotius de Ju-  
re belli ac Pa-  
cis lib. 2. cap. 7.*

Collateral as in lineal from Uncle to Nephew, or *e converso*.

And this mediate descent, or mediate Ancestor, though to many purposes it be immediate; for the Father dying in the life of the Grand-father, the Son succeeds in point of descent in the Lands immediately to the Grand-father; and in a writ of *Entry* shall be supposed to be in by the Grand-father, and not in the *post & cui*.

This is called a mediate descent, because the Father is the *medium* through whom the Son derives his title to the Grand-father.

In

In immediate descents there can be no impediment, but what arises in the parties themselves: For instance, the Father seized of Lands, the impediment that hinders the descent must be in the Father or Son, as if either of them attain, or an Alien.

In mediate descents, a disability of being an Alien or Attaint, in him that is called the *medius antecessor*, will disable a Person to take by descent, though he himself have no such disability.

In *lineal* descents, if the Father be Attaint, or an Alien, and hath issue a *Denizon* born, and dye in the life time of the Grand-father, the Grand-father dyes seized, the Son shall not take, but the Land shall *escheat*.

Djer 2741  
Grays.

In *Collateral* descents A. and B. brothers, A. is an Alien or attaint, has issue C. a *Denizon* born, B. purchases Lands and dyes without issue, C. shall not inherit, because A. which was the *medius antecessor* or *medium differens*, is incapable.

V. But in any descents, the impediment in an Ancestor that is not *medius antecessor*, from whom and to whom will not impede the descent.

Courtneyes c.  
Com. Pleas  
Coron. fo. 141.

As for instance, the Grand-father and Grand-mother both Aliens, or attaint of Treason, have issue, the Father a *Denizon*, who hath issue the Son a *natural born subject*, the Father purchases Lands, and dyes, the Son shall be Heir to the Father, notwithstanding the disability of the Grand-father, (and yet all the blood which the Father hath is derived from his disabled Parents) for they are not *medii antecessores*, between the Father and the Son, but paramont.

The Law does not hinder, but that an *Alien* is of the same degree and relation of consanguinity, as *natural born Subjects* or *Denizons* born, the Son, Father and Brother though Aliens; the Son, Father, and Brother our Law takes notice of as well as *natural born Subjects*, and so it was adjudged, for he shall be preferred in *Administration*, though an Alien, as *next of Kin*.

Michelman  
1 Car. Cro. 3.  
part Caroons c.

But in cases of *Inheritance* the Law takes no notice of him, and therefore as he shall not take by descent, so he shall not impede the descent to the younger Brother: As for instance, A. an Alien, B. and C. naturalized by Act of Parliament, (brothers) B. pur-

32 Ed. 3. tit.  
Cozinage. 5.

purchases Lands and dyes *sine prole*, C. shall inherit, and not A.

A. an Alien, B. and C. his Brothers both naturalized by Act of Parliament, B. purchases Lands and dyes without issue, the same shall not come to A, nor to his issue though a Denizon, but shall come to C. and his issue; the Law taking *no notice* of A. as to *impede* the succession of C. or his issue, though it work a *consequential disability* to bar the issue of A. parallel to what the Law calls *corruption* of blood, which is a consequent of Attainder.

Ramsfey's 2.  
15. Car. II.  
in Com. Banc.

VI. Again in lineal descents, if there be a Grandfather natural born Subject, Father an Alien, Son natural born subject, the Father is made Denizon, he shall not inherit the Grandfather; and if the Father dyes in the life of the Grandfather, the Grandchild, *though born after the denization*, doth not remove neither the personal nor consequential impediments or incapacity of the Father.

In *collateral* descents, the Father a natural born Subject has issue two Sons Aliens, who are both made Denizons, and dyes without issue, the other shall not inherit him.

Godfrey and  
Dixons case.  
Hill. 16. Jac. in  
B.R. Godbolt  
275

A. an Alien marries an English woman, who is seized of Lands and has issue, the Father and Mother dyes, yet the issue may inherit the Mother, *non obstante* the incapacity of the Father being an Alien.

VII. The Statute *de Natis ultra Mare*, declares the issue born of an English-man upon an English-woman shall be a Denizon; yet the construction has been, though an English Merchant marry a Forraigner, and has issue by her born beyond the Seas, *that issue is a natural born Subject*.

*De Natis ultra  
mare* 25 Ed. 3.  
2 Car. in the  
Dutchy in Ste-  
phens cause.

But if an English-woman go beyond the Sea, and there marry an Alien, and have issue born beyond the Sea, that issue are Aliens.

16 Car. 1 Cro.  
437. Bacons  
case.

If an English-woman marries an Alien beyond the Seas, and than comes into *England* and has issue, they are not Aliens, but may inherit.

Prowdes case  
of Kent.

My Lord Cook in his *Commentaries on Littleton*, seems to be of opinion, that if an Alien has issue two Sons born in *England*, one dying without issue, the other shall not inherit him;

Com. lit. fo. 8.



Per L. C. I.  
Hale in Ram-  
fys case

him. But the Law is otherwise taken at this day, as I conceive the reasons that have been given, are

I. Though the descent from one Brother to another Brother be a *collateral descent*, yet it is an *immediate descent*, and consequently if no disability or impediment can be found in *them*, no impediment in another Ancestor will hinder the descent between them:

That this is an immediate descent appears,

First, In point of pleading, one Brother shall derive himself as Heir to another, without mentioning any other Ancestor.

Secondly, According to the computation of *degrees*, Brother and Brother make but one *degree*, and the Brother is distant from his Brother or Sister in the *first degree* of *consanguinity* and no more, by the Laws of *England*.

\* Just. l. 9. tit.  
de gradibus  
consanguinita-  
tis 38.

† Decret. Gra-  
tiani cap. 35.  
quest. 5.

According to the *Civil Law*\*, Brother and Brother make but one *degree*, for the Brother is in the *second degree* from the Brother, yet both make but one *degree*.

According to the *Canon Law*†, *Frater & Frater*, or *Frater & Soror sunt in primo gradu*.

And therefore the Laws prohibiting marriage between Kindred in the *fourth degree*, takes Brother and Sister to be the *first degree* of the four.

Litt. sec. 20.  
31 Ed. 3.  
Gard. 116.  
Hollands cause  
cited by Lit-  
leton.  
\* Servien in  
Comptes, de-  
grees in line  
Collat. Solenk.  
&c.

The Laws of *England* in computation of the degrees of consanguinity agrees with the *Canon Law*, and reckons the Brother and Brother to be the *first degree*.

Herewith agrees the Customs of *Normandy*\*, which though in some cases differs from the Laws of *England*, yet herein and in divers other particulars touching descents, they agree.

\* Browns case  
Mic. 1656. B.R.  
Contra 5 E. 6.  
Bro. Admira-  
tion 47. which  
prefers the  
Brother of the  
half blood be-  
fore the Mo-  
ther.

Another evidence to prove that the descent between Brother is immediate, is this (*viz.*) the descent between Brothers differs from all other collateral descents whatsoever, for in other descents collateral the *half blood* does inherit, but in a descent between Brother the *half blood* does impede the descent, which argues that the descent is immediate.

The Uncle of the part of the Father has no more of the blood of the Mother, than the Brother by the second venter, the Brother by the second venter has the immediate blood of the Father with the Uncle (*viz.* the Fa-thers

thers Brother ) has not but only as they meet in the Grand father; the Brother of the half bl. od is nearer of blood then the Uncle, and therefore shall be preferred in *Administration*.

It is apparent that if in the line between Brother and Brother, the Law takes notice how the Father was the *medium* thereof, the Brother of the second venter should rather succeed the other Brother, because he is Heir to the Father, therefore in a descent between Brothers the Law respects only the *immediate relation of the Brothers as Brothers*, and not in respect of the Father, though it is true, the foundation of their consanguinity, is in their Father or Mother.

Again, if the Father, in case of a descent between Brothers, were such an Ancestor as the Law lookt upon as the *medium* that derives the descent from the one Brother to the other, then the Attainder of the Father would hinder the descent between the Brothers: But the Attainder of the Father does not hinder the descent between the Brothers, the reason is, because *the Father is not such a medium or nexus* that is look'd upon by the Law, as the means deriving such a descent between the two Brothers; As for instance of three cases, two whereof evince the first preposition. (*viz.*)

That although the descent from one Brother to another Brother, though it be a Collateral descent, yet is an immediate descent, *and that if no disability or impediment arises in them*, no impediment in another Ancestor will hinder them.

The younger Brother has issue, and is attainted of Treason and dyes, the elder Brother has title to a *petition of right*, dyes *sans* issue without a restitution, the younger Brothers Son has lost that title, for though the title were in the Ancestor that was not attaint, yet his Father that is the *medium* whereby he must convey that title was attaint, and so the descent was obstructed.

Henry Courtney had issue Edward, and was attainted of Treason and dyed, Edward purchased Lands and dyed without issue, the Sisters and Heirs of Henry were disabled to inherit Edward, yet neither Edward nor his Auntswere attainted, or their blood corrupted, yet because Henry was the *medium through whom* the Aunts

Bbb

must

10 Eliz. Dyer  
274. Grayes  
case.

Com. placit Co-  
ron. fo. 241.  
Henry Court-  
neys case.

must derive their pedigree and consanguinity to *Edward*, who was attainted, the descent was obstructed till a restitution in blood.

But if the Grand-father, of *Edward* had been attainted and not *Henry*, this would not have hindred the descent from *Edward* to the Aunts, because that *Attainder* had been paramount, that consanguinity which was between *Henry* and his Sister, and that is proved by this third case.

*Mich. 40. 41.  
Eliz. ruled in  
the Exche-  
quer in the  
case of Hobby.*

*William Hobby* had issue *Phillip* and *Mary*, and was attainted of Treason and dyed, *Phillip* purchases Lands, and dyed without issue; it was adjudged in that case, that notwithstanding the Attainder of *William Hobby*, *Mary* should inherit, because the descent and pedigree between *Phillip* and *Mary* was immediate, and the Law regards not the disability of the Father.

*49 E. 3. 12.  
par Tanke and  
Persey.*

If the Heir of the part of the Father be attaint, the Land shall escheat, and shall never descend to the Heir of the part of the Mother; but if the Son purchase Lands, and has no kindred of the part of the Father but an Alien, it shall descend to the Heirs of the part of the Mother.

*Co. 7. Rep. 21.  
Calvins case.*

IX. Those that are born *sub fide legiantia obedientia Domini Reges* are not Aliens, and therefore those that were born in *Gascoyne*, *Normandy*, *Acquitaine*, *Turnay*, *Callice*, *Cuyan*, whilst they were under the Dominion of the Kings of *England*, were natural born Subjects, and not Aliens.

*Sir John Bur-  
roughs Sove-  
raignty of the  
Seas, fo. 102.*

*Scotland* is a Kingdom by union, and therefore those that were born in *Scotland* under the allegiance of the King, as of his Kingdom of *Scotland*, before the Crown came united, were Aliens born, and such plea against such Persons was a good plea; but those that were born since the Crown of *England* descended to *King James*, are not Aliens, for they were born *sub fide legiantia Domini Regis*; so those that are born at this day in *Virginia*, *New England*, *Barbadoes*, *Jamaica*, or any other of his Majesties Plantations and Dominions, are natural born Subjects, and not Aliens; so likewise those that are born upon the King of *England's* Seas, are not Aliens.

X. But if an Alien be made an Abbot, Prior, Bishop, or Dean, the plea of an Alien we shall not disable him to bring

to bring any real or mixt action, concerning the possessions that he hold in his politique capacity, *because the same is brought in autre droit.*

The like Law is for an Executor or Administrator, *Pasce 31 Eliz. C. B.*

If an action is brought against an Alien, and there is a Verdict and Judgment against him, yet he may bring a writ of Error and be plaintiff there, and that such plea is not good in that case. *Mich. 6 Jac. in C. B. Brownlow 1. part 45.*

Though an Alien may purchase and take that which he cannot keep nor retain, yet the Law hath provided a mean of enquiry before he can be devested of the same, for until Office be found, the free-hold is in him. *Mich. 29. Eliz. in C. B. Gold Folio 29. Mich. 30 Eliz. Coke 5. part Pages cause fol. 52. Moore 431. Walton v. Maslum.*

And this Office, which is to gain to the King a Fee or Free-hold, must be under the *Great Seal of England*, for a Commission under the *Exchequer Seal* is not sufficient, to entitle the King to the Lands of an Alien born; for the Commission is that which gives a title to the King, for before that the King hath no title, but in cases of *Treason* there upon Attainder, the Lands are in the King without Office; and in that case, to inform the Court, a Commission may go out under the *Echequer Seal*. *Dyer 282. Alien Stamford Prerogative Regis ca. 18. fol. 53. tit Kings seizure, &c.*

XI. If an Alien, and a Subject born, purchase Lands to them, and to their Heirs, they are *joint tenants*, and shall join in Assize, and the Survivor shall hold place till Office found. *Cross vs. Gayer Cro. 3. part fo. 123. Plowd. Com. 477.*

By the finding of this Office the party is out of possession, if the same be of Houses or Lands, or such things as do lye in livery; but of Rents, Common advowsons, and other Inheritances incorporeal which lye in grant, the Alien is not out of possession (be they appendant or in gross) therefore if an Information or an Action be brought for the same, the party may traverse the Office in that Court, where the Action or Information is brought for the King. *17 E. 3. fol. 10. Henry Hills cause.*

And if the King obtains not the possession within the year after the Office found, he cannot seize without a *scire facias*. *29 Assize 30, 32. 32 Assize Travers 32. vouched in Stamfords ple. fol. 54. cap. 18.*

It is not for the *Honour of the King* (an Alien purchasing a Copyhold) to seize the same, for that the same is a base tenure; and so it was adjudged where a Copyhold was surrendered to J. S. in trust that one



23. *Car. in B.R.*  
*Styles 20. King*  
*vers. Holland.*

*Holland* an Alien, should take the profits thereof to his own use and benefit, upon an Inquisition taken, it was adjudged the same was void and should be quashed, because the King cannot be entitled to the Copyhold Lands of an Alien, nor to the use of Copyhold Lands as the principal case was.

*Stat. 14. Car.*  
*2. cap. 11.*

An Alien Infant under the age of 21 years, cannot be a Merchant Trader within this Realm, nor can he enter any goods in his own name at the Custom-house.

14, 15 *H. 8.*  
*Cap. 4.*

If an Englishman shall go beyond the Seas, and shall there become a sworn Subject to any *Forraign Prince or State*, he shall be look'd upon in the nature of an Alien, and shall pay such Impositions as Aliens; if he comes and lives in *England* again, he shall be restored to his liberties.

*Hill. 12 Jar.*  
*Bulstrode 3. part*  
*fol. 19. cited in*  
*St. Thomas Wal-*  
*ter's case.*

An Alien is robbed, and then he makes his Executor, and dyes, and afterwards the goods are waift, the Lord of the Franchise shall not have them, but the Executors.

*Vide Stat. 13. E. 4.*

*Talbot 199.*  
*Turboote vers.*  
*Monson. 8 Jar.*  
*B. R.*  
*Murre 481.*  
*Buryet Aliens*  
*and Denizons*

All personal actions he may sue, as on a Bond, so likewise for words; for the Common Law according to the Laws of Nations protects Trade and Traffique, and not to have the benefit of the Law in such cases is to deny Trade.

restrained by the Stat. of 5 *Eliz. Ca.* to use any Trade, not having served seven years as Apprentices within the Realm. *Vide* the Statute what Trades *Trin. 12. Car. 1.* at Sergeants-Inn in Fleet-Street by all the Judges. *Huttons Reports fol. 132.*



## CHAP. III.

### Of Naturalization and Denization.

- I. *Whether the Kings of England can naturalize without Act of Parliament.*
- II. *What operation Naturalization hath in reference to remove the disability arising from themselves.*
- III. *What operation naturalization, hath as in reference to remove defects arising from a linnal or collateral Ancestor.*
- IV. *A Kingdom conquered, and united to the Crown of England, whether by granting them a power to make Laws, can implicitly create in them such a Sovereignty, as to impose on the Realm of England.*
- V. *Of Persons naturalized by a Kingdom dependant, whether capable of imposing on one that is absolute.*
- VI. *Of Kingdoms obtained by conquest, how the Empire of the same is acquired, and how the Conqueror succeeds.*
- VII. *Ireland what condition it was accounted before the Conquest, as in reference to the Natives of the same, and whether by making it a Kingdom, they can create a Forraigner as a natural born subject of England.*
- VIII. *Of Aliens, as in reference to the transmission of their Goods, & Chattels by the Laws of France.*
- IX. *Of the Priviledges the Kings of England of old claimed, in the Estates of Jews, dying comorant here, and how the same at this day stands.*
- X. *Of Persons born in places annexed, or claimed by the Crown of England how esteemed by the Laws of the same.*
- XI. *Of Denization, and what operation it hath according to the Laws of England.*
- XII. *Where an Alien is capable of Dower by the Laws of England, and where not, and of the total incapacity of a Jew.*
- XIII. *Whether a Denizon is capable of the creation, and retention of Honour, by the Laws of England.*

I. **T**He Father and the Mother are the fountain of the blood natural, and as it is that that makes their Issue, Sons, or Daughters, so it is that that makes them Brothers and Sisters; but it is the civil qualifications of the blood that makes them inheritable one to the other, and capable of enjoying the immunities and priviledges of the Kingdom; but that is from another fountain, *viz.* The Law of the Land, which finding them legitimate, doth transplant them into the Civil rights of the Land, by an Act called Naturalization; which does superinduce

and cloath that natural consanguinity with a Civil hereditary quality, whereby they are enabled not only to inherit each other, but also to enjoy all the immunities and priviledges that meer natural born Subjects may, or can challenge.

*Servien lib. 2.  
cap. 12.*

II. According to the Laws of *Normandy* the Prince might *naturalize*; but such *naturalization* could not divest the descent already vested.

But according to *our Law* by no way but by *Act of Parliament*, and that cures the defect as if they had been born in *England*, and no man shall be received against an *Act of Parliament* to say the contrary.

Therefore if the Father an *Alien* has issue a *Son* born *here*, and then the Son is naturalized, the Son shall inherit.

*Com. Litt. 129.*

If the Father a *natural born* Subject has issue an *Alien* who is *naturalized*, the Father dyes, the Son shall inherit.

III. *Naturalization* does remove all that *disability* and *incapacity*, which is in *Aliens* in respect of themselves, and so puts them entirely in the condition as if they had been *born in England*.

The *Relative* terms, as if *born in England*, is generally used to supply the *personal defect* of the parties naturalized, arising from their *birth out of England*, and therefore shall never be carried to a *collateral purpose*, nor cures a disease of *another nature*, as *half blood*, *illegitimation* and the like; but all diseases, whether in the *parties themselves*, or *resulting* from the *Ancestor*, it cures.

*Acts of Parliament* of this nature may be so pen'd, as to cure defects in the *Father* or *Ancestor*, or in the parties *themselves*.

If *restitution* in blood be granted to the *Son* by *Act of Parliament*, this cures that *disability* that resulted from the *Fathers Attainder*, and that not only to the *Son*, but also to the *collateral Heirs* of the *Father*; the true reason of this is; because *the corruption of the blood by the Attainder is only of the blood of the Father*, for the *Sons blood* or *collateral Heir was not at all corrupted*; for the scope of the *Act* is *taking notice* of the *Fathers Attainder*, does *intentionally* provide against, and remove it, for otherwise the same had been useless.

*Coke 3. Inst.  
fo. 241.*

But

But in *naturalization* without exprefs words, it takes no notice of the defects in the Father or other Ancestor, nor removes them,

And therefore such *Acts of Parliament* as take no other notice but of the *Person naturalized's Foreign birth*, the same cures not any disability of *transmission hereditary* between the Father, Brother, or any other Ancestor, resulting from the disability of them without *actually naming of them*: As for instance, the Father an Alien the Son naturalized by Act of Parliament, the Father or any other Ancestor an Alien purchases Lands and dyes, the Son shall not take by reason of the disability in the Father, but there *may be words* inserted in the Act that may take away the impediment.

IV. Those that are born in *Ireland*, and those that are born in *Scotland* are all alike, for their birth are within the Kings Dominions, and they are born under the like subjection and obedience to the King, and have the like band of *allegiance ad fidem Regis*; yet if a *Spaniard* comes into *Ireland*, and by the *Parliament* is there naturalized, though perhaps this may qualifye and cloath him with the title of a *natural born Subject of Ireland*, yet it has been conceived that it will not make him a *natural born Subject of England*.

For the union of *Ireland* to that of *England*; is different from that of *Scotland*; for the first is dependant, as a Kingdom conquered, the latter independant: Though *Henry the II.* after his Conquest of that Nation, did remit over from *England* the Ancient *modus tenendi Parliamentum*, enabling them to hold Parliaments, which after was confirmed by King *John*; yet that was by no other force then bare Letters Patents. Now when a Nation is once conquered, there remains no Law, but that of the Conqueror; and though he may incorporate such conquered Nations with his own, and grant unto them their ancient Parliamentary wayes of making of Laws; yet the Conqueror can no wayes grant unto them a power, by vertue of such Grant or Confirmation, as to impose upon his own Countrey, for he himself before such Conquest, could not make a *natural born Subject* without Act of Parliament, and most certainly his Conquest adds nothing to his power, though it does increase his Dominion.

My Lord Cook  
so conceives,  
but Mr. Selden  
denyes that  
ever there was  
any such mo-  
dus tenendi,  
but the same  
is an impos-  
ster. Vide his  
Titles of Ho-  
nour, fol. 708.  
710, 718. 10  
721.



Selden. Tit. of Honour fol. 213. in Scotland, the tit. is Carolus Scotia, Anglie, Francie, & Hybernia Rex; but in Ireland, Anglie, Scotie.

\* From hence it is that the King at this day cannot alien or sell Ireland, without an Act of Parliament, for they whose right he succeeds could not do it, Co. 4. Institut. fol. 357. nor can he grant, Portus Maris obediens, advocatibus, & patronationibus Ecclesiarum Metropolitancarum & Cathedralium Cancellar. Jusciar. nor mero & mixto Imperio, and many more, all which are inseparably annexed a Kingdom.

V. Again Kingdoms that are absolute under one Prince, *ad fidem Regis*, there the Acts of each other are reciprocate, and one naturalized by the Parliament of Scotland, is as naturalized in England, because Scotland is a Kingdom absolute; but Ireland is a Kingdom dependant and subordinate to the Parliament of England, for the Parliament in England can make an Act to bind Ireland, but not *e converso*. Now to be a Native of Ireland, is the same as to be born in Ireland, but that is by the Laws of Ireland; but to be born in Ireland, and to be the same as to be born in England, must be by the Laws of England: But there is no Law that hath enabled them with such a power, as to naturalize further then their own Laws extend; but the Law of Ireland does not extend in England, therefore Naturalization in Ireland, operates only in Ireland, because of the failer of power.

VI. Again, Kingdoms that are Conquered, the Empire of the same may be acquired by the Conqueror, only as it is in a King, or other Governour, and then the Conqueror only succeeds into his right, and no further \*, or also as 'tis in the People, in which case the Conqueror hath Empire, so as that he may dispose of it, or alienate it as the People themselves might; for 'tis one thing to enquire of the thing, another of the manner of holding of it, the which are applicable not only to corporal things, but incorporal also: For as a Field is a thing possessed, so is a passage, an Act, a way; but these things some hold by a full right of property, others by a right of usufructuary, others by a temporary right. Again by the will of the Conqueror, the Kingdom, or Republique that is so conquered, may cease to be a Kingdom, or Commonwealth, either so that it may be an accession of another Kingdom, or Commonwealth, as the Roman Provinces, or that it may no wayes add here to any Kingdom, or Commonwealth, as if a King waging War at his own charge, so conquer and subject a People to himself, that he will have them governed, not for the profit of the People chiefly, but of the Governour, which is a property of that we call Heril Empire, not of Civil; for Government is either for the profit of the

† Imperium glind est ob utilitatem ejus qui Regitur, hoc inter liberae locum habet illud inter Dominas & servos, Arist. lib. 7. de Republica.

Gover-

Governour, or for the utility of the Governed, this hath place among Free-men, that among Masters and Servants. The People then that are kept under such command, will be alwayes for the future not a Common-wealth, but a great Family; hence it is that we may plainly understand, what kind of Empire is that which is mixt of Civil and Heril, that is, where Servitude is mixt, and mingled with some personal Liberty: For if the People are deprived of Armes, commanded to have no Iron, for Agriculture, to change their language, and course of life, and abstain from the use of many of their Customes, to be confined † to their own Houses, Castles, or Plantations, not wander abroad to be governed by such Laws as the Conqueror should transmit to them \*, all which are the tokens of a Nation by conquest made subordinate to the Conqueror, and are part Heril, and part Civil, and though they may remain a Kingdom, and absolute within themselves as to the making of Laws, to the obliging each other, yet they can no wayes impose on their Conqueror, for though that be true which in *Quintilian*, is alleged, on the behalf of the *Thebanes*, that that only is the Conquerors which he holds himself, but an Incorporeal right can not be holden, and the condition of an Heir, and of a Conqueror is different, because the right passeth to the former by the descent, but only the thing by the last by virtue of the Conquest. But certainly that is no objection, for he that is master of the Persons, is also master of the things, and of all right which does belong to the Persons, for he that is possessed, doth not possesse for himself, nor hath he any thing in his power who hath not himself, and so it is, if he leaves the right of a Kingdom to a conquered People, he may take to himself some things which were the Kingdoms, for it is at his pleasure to appoint, what measure he will to his own favour; from hence it is we may observe what sort of Empire that Kingdom is at this day.

VII. Now *Ireland* before the same became united to the Crown by the Conquest of *Henry* the II. the natives were meer Aliens, and out of the protection of the Laws of this Realm; yet when once they became a conquered People, and subject to the Crown of *England*, and united

† Case of the Earl of Shrewsbury on the Stat. of 28. 8 of Absentee, 4. Inst. prescribes, fol. 354.

\* Or else they came to London for them Cl. 18. Hen. 3. m. 17. *Ariovistus apud Casarem, 145 esse belli ait, ut qui vicissent iis quos vicissent quemadmodum vellent imperarent, de Bello Gallico l. 1.*

† Leg. qui in servitute est de reg. Juris Leg. si eveniat D. ad leg. Jud. de Adult.

*Calvins case lib. 7. fol. 83.*

For at a general Council at *Casels* of all the Clergy there Anno 1170. Ecclesiastical Laws of England were established, and made of force in Ireland, *Geraldus Cambrensis Topographia Hybernica*, L. 3. cap. 18.  
 \* Pat. 8 E. 1. m. 13. Hybern.  
 † *Mathew Paris Hist. Angl.* p. 121. *leges Angliæ ob omnibus sunt gravioribus præceptis.*  
 † *Reliq. Placita* Parliament, p. 198. to. 208.

*ad fidem Regis* there did arise their allegiance, but that union neither made them capable of the Laws of England, nor of their own, till such time as the Conqueror had so declared them; now what do they desire in order to revive their Government? First, they humbly beg of King Henry II. that since he was pleased that they should remain as a distinct Dominion, that their ancient Customes, or Usages should not continue; that he would be pleased to ordain, that such Laws as he had in England should be of force, and observed in Ireland; pursuant to which he grants them power to hold Assemblies by the three Estates of the Realm, and that they should be regulated according to the institution, and manner of the Parliaments in England, should have the benefit of *Magna Charta*, and other the great Laws of England, and by such means puts them into a method of Governing themselves, according to the known wayes of England, and to make such Laws as should bind among themselves; and by following the example of those of England, their Judgment might be supervized, and corrected according to the Justice, and Laws of England, by Writs of Error, Appeal, and the like.

\* *Oracke* case 33. *Eliz. Coke* 7. part fol. 23. *Calvins* case: Parliament, p. 198. to. 208.

Now here is no continuing, or reviving their Ancient Government, but the introducing a new one, part Civil, and part Heril; nor indeed had they before any such thing as a Parliament there, or general Assembly of the three Estates; for when Henry the II. went over, there were several Kings or Scepts, who had their several and distinct Assemblies; but when they submitted, this great Assembly of Estates which he constituted, was a collection out of all of them, for their future well Government; so that whatsoever *modus* of Regiment, the Conqueror declared it was no more then for the well Governing of the Place, and making such Laws as were necessary, and proper amongst themselves: But for them to impose, by vertue of an Act of Naturalization, upon an absolute Kingdom as England, without the consent of the three Estates of the same, surely was never intended.

*Sir John Davies* on the Conquest of Ireland 103, 104, 105.



tended, much less effected, the case is both great and curious, therefore &c.

VIII. By the Laws of France all Persons not born under allegiance of that King, are accounted Aliens, and if they dye, the King is entitled to the estate, for all shall be seized into his Exchequer or Finances; but if they make a Will the prerogative is disappointed: Yet that extends only to Chattels personal, in which Strangers passing through the same have greater immunities then Aliens there resident, for Travailers dying without Will, the Heirs or Executors shall have benefit and possession of their Estates.

IX. The like Priviledge the Kings of England formerly claimed in the Goods and Estates of the Jews after their death, if the Heir sued not, and paid a fine to the King to enjoy them, as by this Record appears.

*Irratores super sacrum suum dicunt quod predictum Messuagium fuit quondam Eliæ le Bland, qui &c. diem clausit extremum, & quia mos est Judeismi quod Dominus Rex omnia, & Cattalla Judei mortui de jure dare poterit cui voluerit, nisi propinquor heres ejusdem Judei finem, fecerit pro ejusdem dicunt quod Dominus Rex dictum, Messuagium dare poterit cui voluerit, sine injuria alicui facienda, si ita quod sit heres dicti Eliæ finem non fecerit, pro Catallis ejusdem Eliæ habendis, &c.*

*Escheat  
52. Ann  
31. H. 3. m. 4.*

But whether the same is now used, may seem doubtful for the goods of Aliens, escheat not at this day to the Crown, but Administration shall be committed to the next of Kin.

*Carbones case.  
Hobbys case.  
Stephens case.*

X. By the Laws of France, Flanders, Milan, and the French County of Savoy, though possessed by several other Princes, yet the Natives of the same partake in the immunities with the natural born Subjects of France, and if they dye without Will, their Heirs claim their Estates; the reason given, because, say they, those Countreys were never alienated from them, but were alwayes annexed to the Crown of France, who acknowledges them to be their Subjects to this day.

But in England it is otherwise, for those that are born in Gascon, Normandy, Aquitain, and those other Territories which were formerly the possessions of the Crown of England, in which if any had been born when

sub-



Not, this was  
before the  
Statute of 25.  
of E. 3. its  
vouched by  
Shard in 40.  
Assize pl. 24.  
see Calvin's  
case 7. Report,

subject to the same, they would have been natural born Subjects, yet now are esteemed Aliens; and so was the case vouched by *Shard*, of a Norman, who had robbed together with other English, divers of his Majesties Subjects in the Narrow Seas, being taken and arraigned, the Norman was found guilty only of Felony, and the rest of Treason; for that *Normandy* being lost by King *John* was out of the allegiance of *Ed. 3.* and the Norman was accounted as an Alien.

XI. In *France* the Kings may there Denize, so likewise here in *England*; but with this difference, the Letters of Denization by those of *France* remove the totall disability, and incapacity of the Alien.

But in *England* the Charter of Donation, or Denization, is but a temporary, partial, and imperfect amotion of the disability of an Alien, for though it puts the Person Indenizen'd as to some purposes, in the condition of a Subject, and enables a transmission hereditary to his Children, born after the Denization, yet it does not wholly remove the disease, or non-ability, as to the points of descent or hereditary transmission, and resembles a Person in case of an *Attainder*; and therefore if he purchases Lands, and dyes without issue, the Lord by Escheat shall have the Lands.

Co. Inst. 1. fo. 25.

And therefore in lineal descents, if there be a Grandfather natural born Subject, Father an Alien, Son natural Subject, the Father is made Denizon, he shall not inherit the Grandfather; and if the Father dyes in the life of the Grandfather, the Grandchild, (though born after the Denization,) shall not inherit the Grandfather, for the Denization does not remove, neither the personal, nor the consequential impediment, or incapacity of the Father.

Godfr & Di-  
sons case.  
Hill 16. Jac.  
E. R. Godbalt  
275.

So likewise in Collateral descents; As for instance, the Father a Natural born Subject, has issue two Sons Aliens, who are both made Denizens, and one dyes, the other shall not inherit him.

XII. The like Law in Dower, a Man seized of 30 H. 8. Dyer  
44. Lands in Fee, and takes an Alien to Wife, and then dyes, the Wife shall not be endowed: But if the King takes an Alien to Wife, and dyes, his Widdow Queen shall be endowed by the Law of the Crown. *Edmund*, Brother of King

King Edward the I. married the Queen of Navarre, and dyed, and it was resolved by all the Judges, that she should be endowed of the third part of all the Lands, whereof her Husband was seized in Fee. 26 Ed. 1. Rot. 2  
part. 1.

A Jew born in England, takes to Wife a Jew born also in England, the Husband is converted to the Christian Faith, purchaseth Lands, and enfeoffeth another, and dyeth, the Wife brought a Writ of Dower, and was barred of her Dower, *Quia vero contra justitiam est quod ipsa dotem petat, vel habeat de temento quod fuit viri sui ex quo in conversione sua noluit cum eo adherere, & cum eo convert.* 1 Dors clause  
H. 3. Memb. 17.

If an Alien be a Disseisor, and obtains Letters of Denization, and then the Disseisor release unto him, the King shall not have the Land; for the release hath altered the Estate, and it is as it were a new purchase, otherwise it is as if the Alien had been the feoffee of the Disseissee. Co. 1. Inst. fol.  
278. B.

And though Aliens are enabled by Charter of Denization, to a transmission Hereditary to their posterity of Lands; yet a Denizon is not capable of Honour, nor a transmission of the same, without Naturalization by Parliament; for by the Charter of Denization he is made, *quasi seu tanquam ligens*, but to be a Member of Parliament, he must be *ligens reversa*, & *non quasi*, for by his becoming a Noble-man, he claims the place of Judicature in Parliament, the which he cannot till naturalized by Act of Parliament, and then he may claim as eligible to the same, or any other. Co. 4. Inst. fol.  
47.

## CHAP. IV.

## Of Aliens and Trials per medietatem, where allowed, and where not.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                      |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Of the manner of Aliens obtaining Trials per medietatem, at the Common-Law, and of the Antiquity of the same.</p> <p>II. Of the making the same a Law universal within this Realm, as to some Persons, afterwards general, as to all.</p> <p>III. Of the Writ, and some Observations on the summons of such an Inquest.</p> <p>IV. Of the opportunity lost, or gained by praying this immunity.</p> <p>V. Of the awarding of Tales up-</p> | <p>on request on such Enquiries.</p> <p>VI. Where this immunity does not extend in Aliens, and where it does in matters Civil, and Criminal.</p> <p>VII. Of the validity of a witness Alien, and of an Infidel.</p> <p>VIII. The title of a Renegade.</p> <p>IX. Of the benefit of the Kings Pardon, whether it extends to an Alien whose abode is here, but happens to be absent at the time of the promulging.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Sans. Pl. Coron.  
lib. 3. cap. 7.

Lamb. fol. 91.  
3.

Co. 1. Just. 155.

I. **T**riatio Bilinguis, or per medietatem lingue, by the Common-Law was wont to be obtained by Grant of the King, made to any Company of Strangers, as to the Society of Lombards, or Almaines, or to any other Corporation, or Company; when any of them were impleaded, the moyety of the Enquest should be of their own Tongue; this Trial per medietatem in England is of great Antiquity, for in some cases Trials per medietatem was before the Conquest, *Viri duodeni Jure Consulti, sex Wallie totidem Anglis, & Wallis jus dicanto*, and as the Commentator observes, it was called *duodecem Virale Judicium*.

II. This immunity afterwards being found commodious to us Islanders, became universal; for by the Statute of 27. E. 3. cap. 8. It was enacted that in Pleas before the Mayor of the Staple, if both Parties were Strangers, the Trial should be by Strangers; but if one Party was a Stranger, and the other a Denizon, then the Trial should be per medietatem Lingue: But this Statute extended but to a narrow compass, viz. Only where both Parties were Merchants, or Ministers of the Staple, and Pleas before

fore the Major of the Staple: But afterwards in the 28th. Year of the same Kings Reign it was enacted, That all manner of Enquests, which was to be taken, or made amongst Aliens, and Denizens, be they Merchants, or others, as well before the Major of the Staple, as before any other Justices or Ministers; Although the King be party, the one half of the Enquest, or proof shall be *Denizens*, the other half *Aliens*, if so many Aliens, and Forreigners be in the Town, or Place where such Enquest, or proof is to be taken that be not Parties, nor with the Parties in Contract, in Plea, or other quarrel, whereof such Enquest, or proof ought to be taken; and if there be not so many Aliens, then shall there be put in such Enquests, or proofs as many Aliens as shall be found in the same Town, or Places, which be not thereto Parties, as aforesaid is said; and the remnant of Denizens, which be good men, and not suspicious to the one Party or other.

By which Statute the same Custom or immunity, was made a Law universal, although it be in the Case of the King, for the Alien shall have his Trial *per medietatem*. But if it be for Treason. contra. Vide

It matters not whether the moyety of Aliens be of the same Country, as the Alien party to the action is; for he may be a *Dutch-man*, and they *Spaniards*, *French*, *Walleons*, &c. because the Statute speaks generally of Aliens. *postea num. 5.* Dyer 144r.

III. The Form of the *Venire facias* in this case is, *De Niceret, &c. quorum una medietas sit de Indigenis, & altera medietas sit de alienigenis natis, &c.* And the Sheriff ought to return *twelve Aliens*, and *twelve Denizens*, one by the other, with Addition which of them are Aliens, and so they are to be sworn; but if this Order be not observed, it is holpen as a misreturn. Stat. 18. Eliz. cap. 3. part 818-841. Bro. tit. trial.

It has been conceived of some, that it is not proper to call it a Trial *per medietatem Linguae*, because any Alien of any Tongue may serve; but that surely is no Objection, for People are distinguished by their Language, and *medietas Linguae* is as much as to say half English, and half of another tongue, or Nation whatsoever, nor matters it of what sufficiency the Jurors are, for the form of the *venire facias* shall not be altered, but the clause of *quorum quolibet habeat, 4. &c.* shall be in. Cro. 3. part 481.

If



H. 6. 4.

If both parties are *Aliens* then the Inquest shall be all *English*, for though the *English* may be supposed to favour themselves more then *Strangers*, yet when both Parties are *Aliens*, it will be presumed they will favour both alike, without any difference.

Dyer 28.

Dyer 144:  
21 H. 7. 32:

I V. If an *Alien* is party, who slips his opportunity, and suffers a Trial by all *English*, the same is not a Verdict *Erroneous*; for if he will be so negligent as to slip that advantage which the Law gives him, it is his fault; for the *Alien* if he will have the benefit of that Law, he must then pray a *venire facias per medietatem Linguae*, at the time of the awarding the *venire facias*: But if a neglect of that opportunity happens, yet if he prays it after the awarding a general *venire facias*, the same may be retrieved so as it be before the *venire* be returned, and filed, for then he may have a *venire facias de novo*, or otherwise he cannot, nor can he afterwards challenge the *Array* for this cause, if it falls out the Juries are all *Denizens*; though *Sandford* seems to be of a contrary opinion, for the *Alien* must pray it at his peril.

Pl. Corox. 159.  
Dyer 357.

3 E. 4. 11, 12.

Co. l. 10 fo. 104.

Cro. 3. part fol.  
818, 841.21 Herb. 4.  
Stamford 154.  
Hill 36. Eliz.  
Dr. Lopez case  
by all the Judges.

V. If there be a general *venire facias*, the Defendant cannot pray a *decem Tales*, &c. *per medietatem Linguae* upon this, because the *Tales* ought to pursue the *venire facias*: But if the *venire facias* be *per medietatem Linguae*, the *Tales* ought to be *per medietatem Linguae*, as if five *Aliens*, and five *Denizens* appear on the principal Jury, the Plaintiff may have a *Tales per medietatem*; but if the *Tales* be general *de Circumstantibus*, it hath been held good enough, for there being no exception taken by the Defendant upon the awarding thereof, it shall be intended well awarded.

If an *Alien* that lives here under the protection of the King of England, and Amity being between both Kings, commits *Treason*, he shall by force of the Act of 1. and 2. Ph. and Mary, be tryed according to the due course of the Common Law, and shall not in that case be tryed *per medietatem Linguae*.

Vide Lord Dyer  
fo. 144. the  
case of Sherily  
where the  
point is fully handle d.

But in case of *Petit Treason*, *Murder*, *Fellony*, &c. if he prays his Trial *per medietatem Linguae*, the Court ought to grant it.

Co. Inst. 3. part fol. 27.

Yet if an *Information* be exhibited against an *Alien*, the Trial is not *per medietatem*, but according to the Common-Law. Moore's 557.  
Barrs case.

If an *Alien in League* brings an action (if there be cause) the Defendant may plead in abatement; but if it be an *Alien Enemy* he may conclude in the action.

In an action for words the Defendant pleaded not guilty, and said he was an Alien born, and prayed Trial *per medietatem Linguae*, which was granted, and at the *nisi prius* in London; but six English-men, and five Aliens appeared, and the Plaintiff prayed a *Tales de Circumstantibus per medietatem Linguae*, and it was granted, so there wanted one Alien, and the Record was: Coliure Coke  
Entries tit. A-  
lien 1.  
Stamford 160.  
B.  
25 Ed. 3. cap. 8.  
28 Ed. 3. 3.  
2 H. 5. 3,

*Ideo Alius Aliigena de Circumstantibus per vic' London, ad requisitionem infra nominati Julii Caesaris, per mandato Justiciarum de novo appposito, cujus nomen pannelo predicti afflatur secundum formam Statuti, in hujusmodi casu nuper editi & provisus, qui quidem Juratos sic de novo appositus, viz. Christianus Dethick Alienigena exactus venit ac in Juratam, illam simul cum aliis Juratoribus predicta prius impanellatis, & Juratis Juratus fuit, &c.* It was found for the Plaintiff, and afterwards moved in Arrest of Judgment, That no *Tales* was to be granted *de Circumstantibus*, when the Trial is *per medietatem Linguae*, by the Justices of *Nisi prius*, by the Act of 35 H. 8. because in the Act it is spoken of Free-hold of Jurors, and an Alien is not properly said of any Countrey, or to have any Free-hold; but it was adjudged because the Statute was made for speedy execution, that it should be expounded favorably, according to the intent, and meaning of the Makers of the Act; and though in this case the *Tales* was prayed by the Plaintiff, where it ought to have been *ad requisitionem defendentis*, yet that should be taken to be but a misprision, and would be amended. Mich. 35, 36.  
Elix. in B. R.  
Sr. Julius Casar  
Versus Phillip  
Corfini.

VI. If the Plaintiff or Defendant be *Executor* or *Administrator*, though he be an *Alien*, yet the Trial shall be by English, because he sueth in *Auter droit*; but if it be averred that the *Testator* or *Intestate* was an *Alien*, then it shall be *per medietatem Linguae*. Cro. 3. part 275

*Shely* a French man who joyned with *Stafford* in the Rebellion, in the taking of *Scarborough Castle* in the County of *York*, he being taken was arraigned in the Kings Bench upon an Indictment of *Treason*, and the Indictment was *contra legiantiam suam debitam*; and the Indictment was rul'd to be good, although he was no Subject, because it was in the time of Peace between the Queen, and the French King. But if it had been in the time of War, then the Party should not have been indicted, but ransomed; It was likewise rul'd there, that the Trial was good, although the *Venire facias* awarded in *York* was general, and not *de medietatem Lingua*; for such Trial *per medietatem Lingua* does not extend to *Treasons*, 4. *Ma. Dyer* 145. the Indictment ought to omit the words, *Naturalem Dominam suam*, and begin that he intended *Treason contra Dominam Reginam*, &c. *Hill* 36. *Eliz.* in *B. R. Stephano Ferraro d'Games* case in *Dr. Lopez* *Treason*.

If an *Alien Enemy* come into this Realm, and be taken in War, he cannot be indicted of *Treason*, for the Indictment cannot conclude *contra legiance sue debitum*, for he never was in the protection of the King; and therefore he shall suffer death by *Marshal Law*, and so it was rul'd in 13 *H* 7. in *Perkin Warbecks* case, who being an Alien born in *Flanders*, feigned himself to be one of the Sons of *King Edward the 4th.* and invaded the Realm, with intent to take upon him the Dignity; who had his Judgment and Trial by *Martial Law*, and not by the Common Law of England.

Sir John Davis  
Conquest of  
Ireland fo. 103,  
104, 105

VII. The Kingdom of *Ireland* was a Dominion separated, and divided from *England* at the first, and came to the Crown of *England* by Conquest, in the time of *Henry the Second*; and the meer *Irish* were as *Aliens, Enemies* to the Crown of *England*, and were disabled to bring any action, and were out of the protection of the Laws of this Realm; and five *Scepts* of the *Irish Nation* were on'y enabled to the Laws of *England*, viz. *Oneil de Ultonia*, *O Molloghlin de Media*, *O Connoghor de Connacia*, *O Brian de Tholmonio*, and *Ma Murogh de Lagenia*, as appears by the Records of the Dominion of *Ireland*, and several

several grants have been made to the *Irish*, which proves them to be meer Aliens. But afterwards, though the same was a separate and divided Kingdom, yet whilst they were under the subjection and obedience of the Kings of England, if *High Treason* had been committed by an *Irish man*, he might be arraigned, indicted, and tried for the same *within England*, and by the *Laws of England*; and so it was resolved by all the Judges of *England* in *Orucks case*, 33 *Eliz.* and also in *Sir John Perrots case*, that *Ireland* was out of *England*, and yet that all *Treasons* committed there, were to be tryed in *England*, and that by virtute of the Statute of 38 *H. 8. cap. 23.*

*Arthur Crobagan* an *Irish man*, was arraigned, for that he being the Kings Subject, at *Lisbon* in *Spain* used these words, *I will kill the King* (*inuendo Dominum Carolum Regem Angliæ*) if I may come unto him, because he is a *Heretick*; that afterwards he came into *England*, and was taken, and tried by a *Jury of Middlesex*, and was found guilty; and it was held *High Treason* by the Course of the *Common Law*, for his *Traiterous intent*, and imagination of his heart is declared by these words, and within the Statute 25 *E. 3.* He confessed he was a *Dominican Fryar*, and *Priest* in *Spain*.

*Bracton* sayes, that an *Alien born* cannot be a witness; but that is to be understood of an *Alien Infidel*, for the *Bishop of Rosse*, being an *Alien born* (a *Scot*) was admitted to be a witness, and sworn.

Yet an *Infidel* may bring an action against another *Merchant*, or any other however\*, and that without controverſie.

The testimony of a *Renegadoe* is not to be received at this day, by the *Laws of any Christian Kingdom*, or *Republique*; he that hath once renounced his *Faith* can never be believed, therefore he cannot be a witness; and so it was rul'd where one *Domingeo de la Cardre*, a *Renegado*, who was sworn, and gave evidence; afterwards a new Trial being granted, his testimony was rejected, and he not suffered to be sworn, it being at his Trial proved, that he was a *Spaniard*, and a *Christian by birth and education*, and after became a *Jew*.

*Co. 7. fol. 23. Calvins case.*

*Mich. 4. Car. 1. Cro. fol. 242.*

*14 Eliz. in the case of the Duke of Norfolk Co. Inst.*

*4. pt. 279. \* 11 H. 8. fo. 4.*

*Hill 17. 18. Car. 2 di. in B. R. Robles. Verf. Langston.*



If an *Alien be resident*, and commits an offence, he  
Hobart. fo. 271. shall have the benefit of the Kings *general pardon*; but if  
Courtiers case. he is *not in the Kingdom* at the time of the pardon pro-  
mulgated, then he looses the benefit of the same; for he is  
no otherwise a Subject, *but by his residence here.*

---

---

# CHAP. V.

## Of Planters.

Y. Of Possession, and its original right.

II. Of Vacancies natural, which gives a right to Planters.

III. Of Civil Vacancies, how far the same may be possessed.

IV. Of Planters, whether they have a firm right, so as to dispose by Will, or only a usufructuary possession.

V. Of Planters, wanting things necessary for the support of humane life, generally considered according to the Laws of nature.

VI. Wherefore one man may naturally have more than another, and what conditions are an-

nexed to such fortunes, for those that are in necessity.

VII. Whence it is that there was at the beginning, and is still a Tacite condition of re-assuming our Original rights, in case of extream or natural necessity for natural Community.

VIII. Of necessity considered in a Christian Community.

IX. Of the Primitive Communion, considered in reference to its restrictions, and limitations.

X. Of those things that are dedicated to God, and holy use, whether subject to the relief of our necessities.

I. **H**AVING in the first Chapter of this Book discoursed, of the original of property deducing its inception, to that which we call possession, or *meum*, and how the same may be altered by War; it may not seem unnecessary to discourse of the acquiring of property, in the new discoveries of those vast immensities of *America*, which being prepossess'd, seem to deny us legally that title which we pretend to.

Possession by Law, is esteemed the highest title that men can pretend to what they enjoy, which is nothing else but *positio pedis*; as if the Ancients had no other seal to confirm their tenures, but the prints of their feet; and good reason, seeing the mind is not able to take up a place so well as the Body; for many mens wills may concur in (wishing and liking) the same thing, but many bodies cannot concur to the possessing it: Besides the mind cannot set an outward mark on what it likes,

that thereby others might be warned to abstain from it, all which the Body properly doth. *Abraham* and *Lot* going to plant, declared no more then this, *there was room or vacancy enough*; and therefore, without further examination, or scruple, they knew they might turn to the right hand or to the left, to possess what they would to themselves.

II. This Vacancy, which gives us a right to plant, is to be considered in two respects, 1. Natural; 2. Civil, the first is in things which may be possess'd, but actually are not, neither in property, nor use; such a Vacancy which is *nullius in bonis*, might be occupied by *Switzers*, who as *Cesar* sayeth, would fain have changed their rough Hills for some nearer *Campania*; and Deserts or Places un-inhabited, may be possess'd and appropriated to the first Planter, and that without all controverſie, but especially by those who being expelled from their own Seats or Estate, seek entertainment abroad: The *Ant-sebarians* in *Tacitus*, cry out, *As the Heaven to the Gods, so is the Earth granted to Mortals, and what is void is publique*: Looking up to the Sun and Stars, they did openly as it were enquire of them, *Whether they were pleased in beholding any ground empty, and without Inhabitants, they should rather cast forth the Sea, and overwhelm the Spoilers of the Earth.*

III. Civil Vacancy, is where it is not absolutely incorporated, as among the roving *Arabians* and *Moors* in *Barbary*, and other *Affricans* and *Americans*, who possess one place to day, and another to morrow; these by their frequent returns, shew that they abandon not the Places they remove from, as *derelicta quæ quis in bonis amplius numerare non vult*; we can not say, that their natural, or voluptary interest in them is no way improved; for *Grotius* seems to be of opinion \*, that if there be some Desert or barren ground, the same ought to be granted to Strangers upon their request, and, says he, *It is also rightly seized on by them*, giving this reason, *For that Lands ought not to be esteemed occupied which is not cultivated; but only as to the Empire, which remains entire to the first People, they do no offence who inhabite, and manure a part of the Land that lyes neglected \**,

But

*Tacitus Annal.*  
13.

*ubi nec possessio  
est plene in ho-  
mine, nec homo  
plene in posses-  
sione.*

\* *De Jure Belli  
ac Pacis. lib. 2.  
cap. 2. §. 17.*

*Dion. Pruseen-  
As Orat. 5.*

But we must press this Argument of *Grotius* very tenderly, least by the same reason others conclude, that those Estates which are not competently improved, are derelict and occupiable by others, which would introduce perpetual confusions, and easily persuade every man that he could husband his Neighbours Lands better then himself: However this is a clear Case for all Planters, that those wastes, or *asperi montes*, which the Natives make no use of, nor can receive any dammage by their being possess'd by others, may lawfully be impropriated by them.

*Recte facta est concessio, que est sine damno alterius.*

I V. But admitting that Planters may appropriate a Plantation for their living, whether such may dispose of the same by Will (we supposing the Possessor having no Heir) for that he might seem to have but a usufructuary possession, till a descent had been cast, which then perhaps may turn the same into a right\*: Without all controverſie the very immediate possessing, and planting creates a right against all, but he that hath Empire there, and that very right the party in his life time might have actually transferred over to another: Now though the devise in the will operates not till after his death, yet the gift is made during his life; according as the French have it, *Se despoüiller avant que de s'en aller coucher*, that is, man first puts off his cloaths, and then goes to bed.

\* As it is consonant to nature that my share of subsistence, which was before uncertain should now be fixed, so it is necessary that the consent which others gav etc

this at first, should stand fixed, especially if there was no obligation, or declaration at the first to the contrary. *Vide Selden de Jure Nat. & gen. ad men. Heb. id obligat. quod est ex officio quod legis est*: But the sanction of a Law supposes the nullity of a state of nature, not of a right of nature.

V. Again Persons having arrived in those Territories, and planted; but before they have reapt the fruits of their labour, necessity is found within their Huts, and a supply of things for the support of humane life is wanting, whether such may seek the means of subsistence, by the Laws of nature, and in case of refusal (after request) force them from their Neighbour Planter? Surely that which is necessary for any natural subsistence, and necessary to another, belongs justly to me, unless I have merited to loose the life, which I seek to preserve. There were a defect in Gods creating our natures such as they



*Pia mater pa-  
nem inter libe-  
ros distribuit  
ut fructum ve-  
niat singulis.*

are, if he did not provide means to uphold their beings, according to the natural faculties which he hath given them. A good Mother divides her bread among her Children, as a morsel may come to each; let us therefore judge this case by those rules of Justice, by which we judge other cases, if a Father in his Will pass by a Child or names him, but upon false causes leaves him nothing, he is notwithstanding by the equity of the Civil Law admitted to a Childs part, a *legitima*, and may form his action *contra Testamentum inofficiosum*: Men are all a Kin, and we derive one from another, and to let others settle in our places, who may justly expect as much due to them, for their natural subsistence, as was to those who before went out of the World, to make place for them, yea though they assign them nothing at their departure.

Man were of all living Creatures most miserable, if he might not during this life have that measure, which God would not have an Ox defrauded of; thus hath every Dung-hill-fly a right to live, and to remain infertile, which besides existence hath sense, and may not justly be deprived of that its chiefest felicity, unless it be importunate to a nobler Creature.

\* Xenophon in  
his Answer to  
the Sinopeneses:  
*Ubi ius emendi  
nobis non con-  
ceditur, sive in  
Barbarico, sive  
in Grecianico  
solo ubi que o-  
pus sumimus,  
non per preter-  
viam sed ex ne-  
cessitate, expet-*  
Cyri. 13.

V I. 'Tis very true that no man can pretend to share in the sweat of another mans browes, or that the pains, and wasting of another mans life should be for the maintenance of any, but his own; nay though it be granted, that those Neighbour Planters; who being settled before us, and having acquired either by industry, or lawfull donation the fruits of other mens labours, and consequently must enjoy more plenty than a new Comer or Planter; yet all that they possess is not properly theirs, for if another by extream necessity be perishing, and they have above what they can consume in a natural way, then they have no fuller a property in that plenty than Stewards have, and for this regard they are so called in Scripture: *The Earth still is the Lords, and the fulness of it, it is his for he made it of his own matter, and for the fashion of it used not our aid; Yea, 'tis his Sun which still produces, and his Clouds which drop fatness*: We can only pretend the Contribution of

a little pains, for that which is our natural share; so that in plain reason we may not expect to be otherwise qualified then Stewards, for all that which is not probably necessary for our own subsistence, or for theirs, who subsist only by us: Wherefore *Lazarus* ready to perish (not by fault, but by misfortune) had taken *Dives* his Crums, contrary to his will; yet he had not sinned, no more then he who takes something which the Lord or Master hath given him, though the Steward contradict it: But if it so happen, that both the Planters are *in pari necessitate*, then *melior est conditio possidentis*; or as *Saint Paul's* words are, when he excited the Churches Charity, and Alms, for the relief of the distressed Members of Christ, Not (quoth he) *that ye should be streightened, and they abound.*

*Legum lib. 2.  
cap. 12. dub. 127  
num. 70.*

*2 Cor. 8. 13*

VII. The will of those who first consented mutually; to divide the Earth into particular Possessions, was certainly such as receded as little as might be from natural equity; for written Laws are as near as possible may be, to be interpreted by that, and therefore in cases of such extremities we are not without examples, of taking the goods of one to supply the necessities of many; And therefore at Sea, if Provisions begin to fail in a Ship, every one may be forced to bring out openly, what he laid in for his passage in particular; so a Ship at Sea, having intrests of Weather, spent her Sails, Cordage, and Anchors, meeting other Vessels at Sea, may take a supply of such as shall be wanting; but yet governed according to *St. Paul's* words, So that such taking straightens not the other Ship. So when the Sea breaks in upon a Countrey, we may digg in the next mans grounds to make a banck, without staying for the owners permission; yea tear down any mans hedge, or fence, when the Common passage is stopped: For in such cases of necessity humane Laws (as is mentioned afore) do not so much permit as expound their natural equity, and that which Men give to those, who are so innocently distressed, who borrow life only from the shadows of death, *Et pistasse tempestate tumentur*, is not properly a Charity to them as a duty; and if he be a Christian that gives, perhaps he doth more Charity to himself then to the Receiver.

*Grotius de Jure  
Belli ac Pacis  
lib. 2. cap. 2. §.  
7, 8, 9.*

*Leges humane  
obligant uti  
facte sunt, scilicet  
cum sensu  
humane imbecilitatis.*

*Nequicquam  
fundo inspirat  
nammas in imo*

VIII. The reason of this Christian Charity, or Communion, is as far above the natural, as Christ himself was above Nature, this requires an equal beating of all pulses, that as Fellow-Members we have a *Homogenial* sence, and palpitation; we are to divide a Cruze of Oil, and a few handfuls of meal, with one of Christs Flock, with an abandoned Creature; and what can be in more extremity than a poor Planter, in a strange Place, destitute for the present of the supports of humane life?

And surely the violation of this *Jus Charitatis*, is no less then theft, in those who having extended fortunes, never defalcate a *Gibeonites* Crust perhaps for a wandering Angel, these steal even the Ship-wrack'd mans picture from him, which as his whole inheritance he carried at his back, to move compassion, and by the insatiable Sea of their Avarice, and Luxury, they wreck him over at Land.

*\* Intendetur  
inquit socor-  
dia languet  
industria,  
si nullus ex se  
metus aut spes  
& securi omnes  
alienae subsidia  
expectabunt, si  
bi ignavi, &  
nobis gravis,  
Tacit.*

IX. But this free Primitive Communion had, and hath its bounds, and its *quantum* in Contributions, as well as the natural, otherwise it might be fraudulent, and thieving: For they who possess but a little, would contribute it all, on purpose to share equally with those who possess very much, which would introduce a visible decay, and ruin in all; as *Tiberius* rightly observed\*, on *M. Hortalus* his petitioning an Alms for *Augustus Caesar's* sake, *Idleness would encrease, and industry languish, if men should entertain no hope, nor fear for themselves, but securely expect other mens relief, idle to themselves, and burthensom to us.*

Wherefore in the midst of that primitive Communion, we find that the Apostles went *Domatim*, from house to house breaking of bread, therefore they even then retained by their houses in property; which property is supposed by the eighth Commandment, as well as it is by Christian Charity: For no man can steal, but by invading the right of another; and as for Charity, it is necessary he have something of his own, to be able to fulfil its commands, and to make a dole at his door; and it is very convenient that he give it rather with his own hand, then by some publique Collectors, *For Charity is hated most with the sence of its own action.* Moreover under

*Matth. 7. 11.*

under the Law, Jews were commanded, *to love one another as themselves*; yet this Command took not away property then, therefore it takes it not away now; notwithstanding we own the use, or usufruct of our properties to the distressed, though our selves be at the same time in distress; just as we are commanded, by the peril of our own lives, to endeavour to secure our Neighbours life, which is yet a Charity more transcendent then the other, by how much life is above livelyhood? And though the various Laws of Countreys, have variously provided punishment, for those who out of meer necessity take something out of anothers plenty; yet that proves not the Act to be sin, or repugnant to equity, or conscience, but rather repugnant to the conveniency of that Kingdom, or Republique, where the Act is committed; and the true reason of the same is, least thereby a gap might be laid upon to Libertinism; besides Reason of State, we know, considers not vertue, so much as publick quiet, and conveniency, or that right which is *ad alterum*.

X. We will now consider those things which are Gods, which yet are not his in such a strict rigorous sense, but that they lye open to the exceptions of our just necessities, hence that which is devoted as a Sacrifice to him, in case of necessity may be made our dinner, witness the Action of *David*: Wherefore the consequence of our Saviours answer was very strong, when he defended his pulling the Eares of Corn in anothers Field: That if it was lawful for *David*, in his necessity to eat that Bread, which was provided for the Table of God, then how much more was it lawful for him, and his Apostles in their necessities, to take a refreshing out of that which belonged to Man: by the Canon Law, if no other means can be found, the Vessels of the Altar may be sold, to redeem those Souls, who are enthralled in misery, and captivity; and is there not good reason for it, seeing they serve but for the Souls of Men, and therefore the Souls of Men are more precious then they? Yea the Sacrifice it self, to what end is it, but to obtain a state of piety for us?

*Decretals of  
Gratian lib.  
Synodus Nice-  
ensis Can.  
Synodus Aure-  
lacenſis 1. Can.  
Concilium To-  
letanum.*

Upon



Upon what hath been said, it may not seem an injury, if a Planter (wanting those things for the support of humane life) requesting a reasonable proportion of his Neighbour (having it to spare) with an intention to repay; if denied, by force take the same from him, for that reason which creates a punishment in a settled Commonwealth for the like actions, does in such places fail.

*Grotius de Jure Belli ac Pacis lib. 2. cap. 2. §. 8, 9.*

# CHAP. VI.

## Of Merchants.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>I.</b> <i>Merchandizing, the same is honourable, and profitable, both to Prince, and State</i></p> <p><b>II.</b> <i>The Advantages that might accrue to Kingdoms, if the more Nobler, and Richer sort applyed themselves to the same.</i></p> <p><b>III.</b> <i>Of the first Institution of the Company of Adventurers.</i></p> <p><b>IV.</b> <i>Of the Institution of that in England to the Indies.</i></p> <p><b>V.</b> <i>Of the forming of that in Holland, to those parts.</i></p> <p><b>VI.</b> <i>Of the forming the like by the Most Christian King, to the same parts.</i></p> <p><b>VII.</b> <i>Of the advantages, and disadvantages, considered as in reference to reducing them to Companies.</i></p> <p><b>VIII.</b> <i>How Merchants in England were provided for of old.</i></p> <p><b>IX.</b> <i>Of their Immunities settled by Magna Charta.</i></p> <p><b>X.</b> <i>Of Merchants Strangers, whose Prince is in War with the Crown of England, how to be used in time of War, and the reasons why Merchants Strangers ought to be used fairly.</i></p> | <p><b>XI.</b> <i>Goods brought in by them, the Moneys raised how to be disposed, according to the Statute of Employment.</i></p> <p><b>XII.</b> <i>Merchant Strangers, made Denizens by Parliaments, or Letters Patents, to pay as before they were so made.</i></p> <p><b>XIII.</b> <i>What things requisite, that makes a Competent Merchant, according to Law.</i></p> <p><b>XIV.</b> <i>One Merchant may have an Account against his Partner, and if he dyes, no survivorship to be of the Estate belonging, or acquired in their Traffique.</i></p> <p><b>XV.</b> <i>Of their Immunities, which they claim by the Custom of Merchants, in reference to Exchange.</i></p> <p><b>XVI.</b> <i>All Subjects are restrained to depart the Realm, but Merchants.</i></p> <p><b>XVII.</b> <i>Prohibitory Laws bind Forraigners, according to the Leagues of Nations.</i></p> <p><b>XVIII.</b> <i>The necessity, and advantage that is incumbent on Merchants, to preserve their marks.</i></p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**I.** **T**HERE are certain affairs which should be left to the poor, and Common People to enrich them, but there are others which they only can execute which are rich; as that at Sea by way of Merchandizing, which is the most profitablest in an Estate, and to the which they should attribute more honour, then some do here at this day. For if in all Estates they have thought it fitting

*\* Præter mera  
nature usum  
Naves rei mi-  
litari, & tu-  
zande in mari  
contra exter-  
nam vim rei-  
pub. inservire  
ceperunt Ari-  
stotle 7. Pol.  
6. Mare &  
classem in bel-  
lo esse tute-  
lam reipub. ait  
Tacitus 5. Hi-  
stor. Classes  
Imperii muni-  
menta vocat  
Atheniensium  
Legati apud  
Thucididem  
Lib. 1. Histor.  
Orat. ad Lac-  
dæmonians,  
fortunas Gre-  
cie in navium  
prospicio sitas*

*fuisse prædicant, ejus rei muri lignei Themistocles abunde fidem fecerunt idem ex-  
perientia satis hodie loquitur. Inde Cosmæ Medico familiare fuit dictum, Non  
habendum potentem qui potentis terrestri, non simul etiam navalem haberet  
conjunctam. Et Hispanorum est adagium, Regnum sine Portu esse sicut furnum  
absque igne: Præterquam quid navigationes cultui vite, & artium translationi Co-  
loniarum valetudine, & voluptati serviunt.*

ting, to invite the Subjects by honour to the most pain-  
ful, and dangerous actions, the which might be profi-  
table to the Publick; this being of that quality, they  
should attribute more honours to those that deal in it:  
And if Nobility hath taken its foundation from the cou-  
rage of Men, and from their valour, there is certainly  
no vocation; in the which there is so much required as  
in this; they are not only to encounter, and strive a-  
mongst Men, but sometimes against the four Elements  
together; which is the strongest proof that can be of the  
Resolution of Man: This hath been the occasion, that  
some have been of opinion, that they should open this  
door to Merchants, to attain to Nobility, so as the Fa-  
ther, and Son hath continued in the same Trade, and  
to suffer Noble Men, who are commonly the richest in  
an Estate, to practise themselves (without prejudice to  
their condition) in this of Commerce; the which would  
be more honourable unto them then to be Usurers, and  
Bankers, as in Italy; or to impoverish themselves, in  
doing nothing but spend, and make consumption of their  
fortunes, and never gathering, or laying up.

II. Hence will grow many advantages, both to the  
publique, and private; To the publique, for that they  
that should deal in Commerce, having means, cou-  
rage, and sufficiency for this conduct, it would be far  
greater in the furnishing more Ships to Sea, and better  
armed, the which the Estate at need might make use  
of for the safety of the Publick; and would add to the  
reputation of the Nation in all parts, they knowing  
that an indignity, or dammage offered to such, would  
require satisfaction with a strong, and powerful hand;  
the which they cannot do, who being poor, and having  
but small stocks, or what they borrow from Bankers,  
or are indebted for the Cargoe which they send forth,  
have

have not the courage to hazard themselves, and their all in an enterprize that is great: Besides such who have honour, riches, and courage, would keep up the reputation of their several Commodities, by the not lessening the Market, the which the poorer sort, to pay Customes, Freight, Bills of Exchange, and other contingent, and necessary charges, which accompanies the importing, they are often forced to mortgage the Cargoe to the Bankers, at excessive usury, or else to sell for ready money, for an inconsiderable gain, nay some rather then their wants to be known, for ready money will sell for loss; all which would be prevented, if such Persons of value would apply themselves, to a prudent management of the same; for whatsoever hazard they run, there would be more gotten by such in 2. voyages, then the smaller sort in three, or four Voyages, and by that means it would be the occasion of preventing of many expenses, or importuning their Prince with demands; nay perhaps, they might get more at Sea in one year, then in ten at Court. Besides experience hath taught, and doth dally manifest, that where the richest have dealt in this of Commerce, it hath enriched both them, and the Estate under which they lived; and at this day the Examples of the *Venetians*, *Portugals*, *Spaniards*, and *Hollanders* have made it known unto us.

III. The consideration of which, first gave light to that industrious Nation the *Burgundians*, to procure the Association, or Incorporation by *John*, Duke of *Brabant*, of that Ancient Company of the Adventurers Anno 1248, which were then called the Brotherhood of *Saint Thomas Becket of Canterbury*; which being afterwards translated into *England*, was by *Edward the III.* confirmed, and by his Successors *Henry the IV.* *Henry V.* *Ed. IV.* *Henry VI.* *Richard III.* and King *Henry the Seventh*, who gave them the name of Merchant Adventurers, and from him successively hath their Charter been confirmed down, to his sacred Majesty that now is; and as this Society is of Ancient estimation, so is their Government very commendable.

IV. The Society of the Company, trading to the *East-Indies*, differ from others, both as in reference to the



Persons, Members which are at this day many of the principal Nobility of *Engalnd*, as also for that their Adventurers run all into many stocks, and is governed, and carried all jointly upon benefit, and loss, they were incorporate Anno 1599. and since then they surrendred their Charter, and accepted a new one; and are incorporated by the name of *Governour, and Company trading to the East-Indies*; their Adventurers run all into one Stock, and is governed, and carried on upon benefit, and loss; the same being at this day, according to the subscriptions, about four hundred thousand Pounds, which the several Persons Subscribers may sell, transfer, and dispose of; but they can no wayes take out the same: The great Stock may be encreased, if the Company shall see occasion so to permit; but they are very cautious of the same, for that the greater the dividends, the more reputation the Stock bears, which above all things is to be maintained; however directly upon his own account, no Person can have above ten thousand Pounds Stock there, nor can he have a compleat title, till he is made a Free-man of that Society; their returns are very profitable, and of late very rich, and have wany Places of great importance in *India*, as *Mesopotam* on the Coast of *Cormondel*, *Bombay*, *Suratt*, *Fort St. George*, *Bantam*, &c.

V. The *Dutch* having found relief in their distress, from the *British* shoar, against their powerful Enemy, found also a pattern to carry on Commerce, they not being wanting in the imitating the Incorporation of a Company, trading to those Places which they possess'd in the *East-Indies*; and therefore in the Year 1603. leave was granted from the Estates, to Traffique into those Parts before all others, during the space of one and twenty years, the which was granted them, in consideration of five and twenty thousand Florens, which they promised to pay to the Estates during the first ten years; thus reduced all into into one Company, *Amsterdam* had one moyety, *Midleburgh* in *Zealand* a fourth part, *Delph*, *Rotterdam*, *Horne*, and *Enchusen* had either of them a sixth part; and the whole Stock of this Union amounted to six millions of Livers, or six hundred thousand pound Sterling.

For

For the direction of this Trade, and the interests of the Associates, they have established, in either of those Towns, a certain number of Administrators, at *Amsterdam* twenty, at *Midleburgh*, twelve in either of the rest seven; and if any one dyes, the Chamber of the Place names three, of which either the Estates General, or the Magistrat of the Town chooseth one.

Those Chambers choose Seventeen among the Administrators, that is to say, *Amsterdam* eight, *Middleburgh* four, *Delph* and *Rotterdam* two, *Horne* and *Enchusen* two, and the Seventeen are chosen alternatively, sometimes at *Midleburgh*, sometimes at *North-Holland*, the which are called together to resolve jointly of how many Ships, and of what Equipage, and Furniture they shall make the Fleet, which they mean to send, and to what Fort, or Coast they should go: This Assembly is held six years together at *Amsterdam*, and afterwarde two years at *Midleburgh*, and then again at *Amsterdam*; by the Conditions of the accord, the Ships must return to the same Port from which they parted; and the Spices which are left at *Midleburgh*, and other Chambers, is distributed amongst them by the weight of *Amsterdam*, and the Chamber which hath sold her Spices, may buy from other Chambers.

By this Order they have hitherto continued this Commerce with reputation, not as simple Merchants only, but as if they were Sovereigns, they have made in the Names of the Estates, Alliances with many of the Princes of those parts; as with the Kings of *Sian*, *Quadoen*, *Pattam*, *Jabor*, the Heir of *Mataca*, *Bornean*, *Achin*, *Sinnatra*, *Baretan*, *Jocotra*, and other Kings of *Jatta*; they have made themselves absolute Masters of the Island of *Amboina*, but by what means? — Where they have a President, which governs in their name; at *Banda* they have a Fort for a retreat, where they must deliver them the Spices at a certain price; in *Trinade* they have another a mile distant of that of the *Portugales*; at *Magniene* they have three; at *Motire* one; at *Gilolo* they have taken that which the *Portugales* have built; and indeed whatsoever either can, or may consist with their interest in those parts, they have engrossed, and

by that means almost the Trade of the whole Spices of the East.

VI. So likewise the Most Christian King, hath within few years established such another Trading, to those Eastern Parts.

And in England we have several others, as that of trading to Turkey, that of Africa, to Guiny, and several others, dividing the several Trades according to the Coasts, and Places where they are appointed; forbidding them to intrench, or inroach on each other, so likewise to all other his Majesties Subjects, on severe penalties.

VII. Now it is not the dividing of the Trade into Companies, that can answer the expectation, but it is the dividing the Trade into Companies, where the Places may bear it; as that to the Indies, Turkey, Hamborough, and some others; But to some others, as the Canaries, France, or any of those Places on this side the Line, it has been conceived, the Trade will not bear it, but the same would be better distributed, either into the Trade of voluntary Associations, or single Traders; others, perhaps would result into Monopolies, if incorporated; however the Standard rule is, to know whether the Trade of the Place will bear a Company, or not.

VIII. Merchants in England were always favourably provided for, by the Common Law of this Kingdom: By the Ancient Laws of King Alfred it was provided, *Defendue fuit, que nul Merchaut Alien ne hantise Angleterre, forsique aux quater Foires, ne que nul demeurest in la terre püter quarante Jours: Mercatorum navigia, vel inimicorum quidem quecumque ex alio (nullis jactata tempestatibus) in portum aliquem invenerint tranquilla pace fruuntur, quin etiam si maris acta fluctibus, ad domiciliū aliquod illustre, ac pacis beneficio donatum navis appulerit inimica, atque istuc navis confugerint, ipsi & res illorum omnes angusta pace potiuntur.*

IX. Again by the Grand Charter of our Liberties, they are provided for in these words: *Omnes Mercatores nisi publice antea prohibiti fuerint, habeant saluum, & securum conductum, exire de Anglia, & venire in Angliam, & morari, & ire per Angliam, tam per terram quam*

Mirour Cap. 1.

Sect. 3.

Intr. leges

Ethel. Cap. 2.

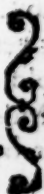
Magna Charta  
Cap. 30.

quam per aquam, ad emendum, vel vendendum sine omnibus malis tolentis per antiquas, & rectas consuetudines præterquam in tempore guerra. Et sint de terra contra nos guerrina, & tales inveniantur in terra nostra in principio guerra, attachiantur sine damno corporum suorum, vel rerum, donec sciatur a nobis, vel a Capitali Justitiario nostro, quomodo Mercatores terre nostræ tractantur, qui nunc inveniantur in terra illa contra nos guerrina; Et si nostri salvi sint ibi alii salvi sint in terra nostra.

1. By which it is declared, that all Merchant Strangers might be publicly prohibited to Trade into this Realm, be they in Amity, or otherwise.

2. All Merchant Strangers in Amity, except such as be so publicly prohibited, shall have safe and sure conduct in seven things.

1. To depart out of
2. To come into
3. To tarry in
4. By Water, and Land to go in, and thorough
5. To buy, and sell,
6. Without any manner of evils Tolls,
7. By old, and rightful Customs,



England,

X. But concerning such Merchant Strangers, whose Prince is in War with the Crown of England, if they are found within the Realm, at the beginning of the War, they shall be attached with a Privilege, and limitation, i.e. without harm of Body, or Goods; with this limitation, until it be known to the King, or his Chief Justice\*, how Merchants of England are used, and intreated in their Countrey, and accordingly they shall be used in England, the same being *jur Belli*. But for Merchant Strangers, that come into the Realm after War begun, they may be dealt withal as open Enemies: It being the Pollicy of England ever to entertain Merchant Strangers fairly, in the 18. year of Ed. 1. in the Parliament Roll it is contained thus: *Cives London petunt, quod alienigenæ Mercatores expellantur a Civitate, quia dicantur ad depauperationem Civium, &c.* — *Rex intendit quod Mercatores extranei sunt idonei, & utiles magnatibus, &c. & non habet Concilium*

\* That is the Keeper of the Realm in his absence.  
Et in Republica maxime conservanda sunt *jur Belli* Co. 2. Inst. fol. 58.

*Re-* Rott. Parliam. 18. Ed. 1. fol. 4. num. 59.  
*mentis* 18. Ed. 1. fol. 4. num. 59.



*cos expellendi*: However though great Immunities were granted them, yet they alwayes found Sureties, that they should not carry out the Merchandize which they brought in.

*Rot. Vassan. 18.*  
*Ed. 2. m. 21.*

XI. And at this day, if they bring in any Merchandize into the Realm, and sell the same for Moneys, they are to bestow the same upon other Merchandizes of England, without carrying of any Gold, or Silver in coin, plate or mass out, on forfeiture; the principal reason of this was as well to preserve, and keep the Gold, and Silver within the Realm, as for the encrease of the Manufactures; and the same at this day extends as well to Denizens, so made by Letters Patents, as Strangers; however he may use the same in payment, to the Kings Leige People, without \* incurring the penalty of the Statute of 4 H. 4. but yet in strictness of Law, ought not to receive † any Gold in payment.

\* Stat. 17 E.  
4. Cap. 1. confirmed by 3 H.  
7. Cap. 8.  
† 8 H. 6. cap. 14

11 H. 7. cap. 14.  
22 E. 8. cap. 8.  
1 Eliz. cap. 1.  
Co. 2. Inst. fol.  
742.

*Leg. unic. Cod. de vend. & Al-  
cess. in Leg. mercis 66. &  
in Leg. mercis 207. de verb. sig. 4.*

*c. officius 83. 29.*

*Paul de Cass. de Cap. 1. ff. de inst. 1.*

XII. All Merchant Strangers that shall be made Denizens, either by the Kings Letters Patents, or by Act of Parliament, must pay for their Merchandize like Customs, and Subsidy, as they ought, or should pay before they were made Denizens.

XIII. Every one that buys and sells, is not from thence to be denominated a Merchant; but only he who traffiques in the way of Commerce, by importation, or exportation; or otherwise in the way of Emption, vendition, Barter, permutation, or exchange, and which makes it his living to buy and sell, and that by a continued assiduity, or frequent negotiation in the mystery of merchandizing: But those that buy Goods, to reduce them by their own art or industry, into other forms then formerly they were of, are properly called Artificers, not Merchants: Not but Merchants may, and do alter Commodities after they have bought them, for the more expedite Sale of them, but that renders them not Artificers, but the same is part of the mystery of Merchants; But Persons buying Commodities, though they alter not the form, yet if they are such as sell the same at future dayes of payment, for greater price then they cost them, they are not properly called Merchants, but are *Wholesalers*, though they obtain several other names,

as *Ware-House Keepers*, and the like, but Bankers, and such as deal by Exchange, are properly called Merchants. F. N. B. 117. B. 38. E. 37. Co. on Littleton fo. 182. per Legem mercatoriam, jus accrescendi inter mercato- per beneficia Cammercii lo- cum non habet. Co. sur Litt. fo. 172. lib. Intrat. fol. 17, 18, 19.

XIV. The Wares, Merchandizes, Debts, or Duties that Merchants have as joint Traders, or Partners, shall not go to the Survivor, but shall go to the Execntor of him that is deceased.

If two joynt Merchants occupy their Stock, Goods, and Merchandize in Common to their common profit, one of them naming of himself a Merchant, shall have an account against the other naming him a Merchant; and shall charge him as *Receptor denariorum ipsius B. ex quacunque causa, & contractu ad communem utilitatem ip- forum A. & B. provenient sicut per legem Mercatoriam ratio- nabiliter monstrare poterit.*

XV. And as the Law establishes security for their E- states, so it gives them other immunities in their Com- merce; for if one Merchant draws a Bill of Exchange upon another, be it in-Land, or out-Land (if it be by way of Exchange) the acceptance of the Bill by the Par- ty, shall bind him to that party, to whose use the Mo- ney in the Bill is to be paid, and he may bring his action in his own name, *per legem Mercatoriam.* Martin versus Bonx. 1 Jac. B. R. 2 Cro. fo. 7.

And so it is if a third Person, that is a Stranger to the Bill, shall accept the same for the honour of the Drawer, it shall bind him as effectually, as if he upon whom the Bill was drawn had accepted it; and this by the Custom of Merchants. Vid. tit. Ex- change.

XVI. All other Subjects are restrained to depart the Realm, to live out of the Realm, and out of the Kings Obedience, if the King so thinks fit; but Merchants are not, for they may depart, and the same is no contempt, they being excepted out of the Statute of 5 R. 2 cap. 2. And by the Common Law, they might pass the Seas without Licence, though not to Merchandize. Mich 12, & 13 Eliz. Dyer fol. 296. Pasch. 23. Eliz. fo. 375. 3.

XVII. It was once conceived, that those Laws which were prohibitory against Forraign Goods, did not bind a Merchant-Stranger, but it was ruled otherwise: For in the Leagues that are now established between Na- tion and Nation, the Laws of either Kingdom are ex- cepted; and therefore as the *English in France*, or in any other Nation in Amity, are subject to the Laws of 19 H. 7.

*Tomlinson qui  
tam vers. Henry  
de Vale Pasce,  
36 Eliz. in the  
Exchequer,*

that Countrey where they reside ; so must they of *France*, or of any other Countrey be subject to the Laws of *England*, when resident or here ; and therefore if a *French* Man imports any Points, Laces, Belts, Hats, and the like, they are forfeited.

XVIII. The marking of Goods is of a great consequence, as in relation to the settling the property of the Merchandize in the right Owner ; and in Courts of Justice, both the Civil Law, and the Common Law, hath a great respect to the same, therefore the use has been, that every particular Merchant, hath his particular mark appropriated to him ; by which means, if the Person is of any value considerable, as in relation to Commerce, his mark is presently known.

*The Cutlers of  
London do  
give to each  
Member a par-  
ticular Mark,  
which cannot  
be used or ap-  
propriated,  
without a par-  
ticular order  
and leave of  
the Company  
and Party, and  
so other Com-  
panies.*

*2 Cro. fo. 471.*

Every Merchant is to set down his mark upon his Books of Account, wherewith his Commodities are marked ; so Companies and Societies have their particular mark : No Merchant ought to use another mark, without leave first had of the Party whose mark the same is ; for as Flags are the Ensigns, that give consufance of the Nation whose Ships they are, so marks are to ascertain the Owners of their property, without confusion or damage : And though to set the mark of another Man, alters not the property, yet it may work such a detriment as may be very mischievous ; and therefore by the Common Law of *England*, if *J. S.* shall maliciously set the mark of *J. D.* upon his Goods, to the intent *J. D.* shall, or may be brought into any trouble, or put to any damage or charge, an action of the case will against *J. S.*

# CHAP. VII.

## Of Factors.

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>I. Factors, their qualifications generally considered, as in reference to their employment.</p> <p>II. Of Commissions, and the words in the same, that qualifies them in their employment.</p> <p>III. Of Commissions to Factors that limit their actions.</p> <p>IV. Of a Factor that deals for several Merchants, of the obligations that oblige, and not oblige each other.</p> <p>V. Of their power, considered as in reference to the dispensing with the Debtors of their Principals.</p> <p>VI. Where the false entry, or unfaithfulness of the Factor, subjects him to answer damage</p> | <p>to his Principal; and of the like committed by the Principal, where to answer to the Factor.</p> <p>VII. Of Goods remitted to Factors, and lost in their possession, who bears the misfortune.</p> <p>VIII. Bills of Exchange drawn on the Factor by the Principal, and accepted, but before day of payment the Principal becomes Bankrupt, whether the same must be payed.</p> <p>IX. Of Freightings of Ships by a Factor, where he is obliged to see the same discharged.</p> <p>X. Of the general rules to be used, touching the construction of their actions.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

I. **A** Factor is a Servant, created by a Merchants Letters, and taketh a kind of provision called Factorage, such Persons are bound to answer the loss, which happens by over-passing, or exceeding their Commission; but a simple Servant, or an Apprentice can only incur his Masters displeasure. The Spaniard hath a Proverb: *Quien passa Commission pier de Provision; He that exceeds his Commission, shall lose his Factorage*: But time and experience hath taught them to know better things, for now it is: *Subolca la paga, His Purse must pay for it*. The gain of Factorage is certain, however the success of the Voyage proves; and it is the prudence of Merchants to chuse honest, and industrious Persons, for otherwise the Factor may grow rich, and the Merchant poor; the first being sure of his reward, the latter uncertain of his gain.

II. In Commissions they now generally insert these

Ddd 4

words:



words: *Dispose, do, and deal therein as if it were your own*; by which the actions of the Factor are to be excused, though it turns to his Principals loss, because it shall be presumed he did it for the best, and according to his discretion.

9 Jac. B. R.  
Rott. 416. Bar-  
ton & Sad-  
locks Bolstr. 1.  
part 103.

III. But bare Commission to a Factor, to sell and dispose, will not enable him to trust, or give further day of payment; for in the due execution of his authority, he ought on a Sale to receive *quid pro quo*, and as he delivers one receive the other, for otherwise by that means, as they may trust six Moneths, they may trust sixteen years: Nor by the vertue of that clause, of *Doing as if it were their own*, may they trust out to an unreasonable time, as ten or twenty years instead of one, two, three Moneths, which is the Customary time for the like Commodities: And so it was adjudged, where one had remitted Jewels to his Factor in *Barbary*, who disposed of the same to *Mullehack* the Emperor, for a Sum certain to be paid at a time, which being elapsed, the Factor not obtaining it, was forced to make the same good to his Principal.

IV. Again, one and the same Factor may act for several Merchants, who must run the joynt risque of his actions, though they are meer Strangers to one another; as if five Merchants shall remit to one Factor five distinct Bales of Goods, and the Factor makes one joynt Sale of them to one man, who is to pay one moyety down, and the other at six Moneths end; if the Vendee breaks before the second payment, each man must bear an equal share of the loss, and be contented to accept of their dividend of the Money advanced.

Mich. 17 Jac.  
C. B. Van Heath  
versus Turner  
Winch 24, 25.

But if such a Factor draws a Bill of Exchange, upon all those five Merchants, and one of them accepts the same, the others shall not be obliged to make good the payment.

V. And as the Authority, and trust reposed in Factors is very great, so ought they to be provident in their actions, for the benefit of their Principals; and therefore if Factors shall give time to a Man for payment of moneys contracted on Sale of their Principals Goods, and after the time is elapsed, they shall sell Goods.

Goods of their own to such Persons for ready Cash (leaving their Principals unreceived) and then such Men break, and become insolvent, the Factor in equity and honesty ought to make good the losses, for they ought not to dispense with the non-payment of their Principals Moneys, after they become due, and procure payment of their own to an other mans loss; but by the Laws of *England* they cannot be compelled.

VI. Yet if Goods are remitted to a Factor, and upon arrival he shall make a false Entry at the Custom-house, or land them without the Customer, whereby they shall incur a seizure or forfeiture, whatsoever the Principal is endamaged, he must inevitably make good, nor will such general clause help him as above: But if a Factor makes his Entry according to the Envoice, or his Letter of Advice, and it falls out the same are mistaken, if the Goods shall be lost, yet the Factor is discharged.

*Levison verba  
Kirke Trin. 7.  
Jac. in B. R.  
Lane Repor. 65.*

And as fidelity, diligence, and honesty are expected from the Factor, so the Law requires the like from the Principal, judging the act of one to be the act of the other; and therefore if a Merchant shall remit Counterfeit Jewels to his Factor, who sells and disposes them for valuable considerations, as if they were right, if the Factor receives any loss or prejudice thereby, by imprisonment or other punishment, the Master shall not only make good the damage to the Factor, but also render satisfaction to the Party damnified; and so it was adjudged, where one *How* was possessed of three Counterfeit Jewels, and having Factors in *Barbary*, and knowing one *Southern*, a Merchant, was resident on the Place, consigns those Jewels to his Factor, who receiving them, intreated *Southern* to sell those Jewels for him, telling him they were good Jewels; whereupon *Southern*, not knowing they were counterfeit, sold them to the King of *Barbary* for eight hundred Pounds (they being worth really but one hundred Pounds) and delivered the Money to the Factor, who remitted the same to *How*; the King of *Barbary* not long after finding himself couzened, committed *Southern* to Prison till he repaid the eight hundred Pounds: Whereupon *Southern* coming

\* *Hill 25 Jac  
B. R. Cro. 2.  
part fo. 490.  
Bridgman 116,  
127. Popham  
143. not re-  
solved that  
Book.*

Hill 43. Elix.  
B.R. Petties &  
Soames case  
Goldsbr. fol.  
137.

coming for *England*, brought his action against *How*, and had Judgment to recover his damage; for the Principal shall answer for his Factor in all cases where he is privy to the act or wrong: And so it is in Contracts, if a Factor shall buy Goods on the Account of the Principal (especially if he has used so to do) the Contract of the Factor will oblige the Principal to a performance of the bargain.

† *Southels case.*  
*Coke lib. 4. fo.*

VII. When Factors have obtained a provenue or profit for their Principal, they must be careful how they dispose of the same, for without Commission or order they must be responsible. Goods remitted to Factors, ought in honesty to be carefully preserved, for the trust is great that is reposed; and therefore a Factor robbed in an Account, brought against him by his Principal, the same shall discharge him †. And so it is if a Factor buyes Goods for his Principal, which afterwards happens to be damaged, the Principal must bear the misfortune: But if a Factor shall dispose of the Goods of his Principal, and take Money that is false, he shall there make Good the loss; yet if he receives Moneys, and afterwards the same is by Edict, or Proclamation lessened in value, the Merchant, and not the Factor must there bear the loss.

Again, in Letters of Credit, the Factor must be sure to see, whether the Commission is for a time certain, or to such a value, or not exceeding such a Sum, or general, in which he must have a careful eye.

*Quere*, If equity may not relieve in such case.

VIII. A Merchant remits Goods to his Factor, and about a Moneth after draws a Bill on him, the Factor having Effects in his hands, accepts the Bill, then the Principal breaks, against whom a Commission of Banckrupts is awarded, and the Goods in the Factors hands are seized; it has been conceived, the Factor must answer the Bill notwithstanding, and come in a Creditor, for so much as he was enforced by reason of his acceptance to pay.

IX. If a Factor enters into a Charter Party with a Master for Freightment, the Contract obliges him; but if he lades aboard generally the Goods, the Principals and the lading are made liable, and not the Factor, for the Freightment.

The

The Principal orders his Factor, that as soon as he hath laoded (he having Moneys in his hand) to make an Assurance on the Ship and Goods, if the Ship happens to miscarry by the Custom of Merchants, he shall answer the same, if he hath neglected his Commission; so it is, if he having made an Assurance, and loss hath occurred, he ought not to make a Composition without orders from his Principal.

Generally the actions of Factors do depend on Buying, Selling, Freighting, and all other the Heads that have been treated in the Second Book, by which their employment is universal in matters Maritime, and of Commerce; and the questions which would arise touching the same, if treated on, would be *infinitum*: However these are to be the Standard rules, which should govern their actions; *viz.* honesty, faithfulness, diligence, and observing of Commission, or Instructions, which being considered, and weighed by those that shall be Judge of their actions, a right understanding and determining of the matters, arising between them and their Principals, would soon be ended.

But those sort of Factors that have wanted those things, seldom or never render any other account, but long, and tedious Chancery Suits; by which they not only have endammaged their very Trade, but seek to marry their Principal to a double affliction, by obliging them to sue either a Beggar, or that which is worse, a naughty man.

On the other hand, Factors that behave themselves worthily, and prudently in the service of their Principals, ought after their tedious service be numbered amongst those that justly challenge that worthy denomination of *Merchant*: And such was he who never made breach of Commission, in the service of his Principal, but once; that was, when Wines were committed to him to dispose of, but the price (by reason of a glut) fell, advice being given to the Principal of the same, who immediately in passion writes to his Factor, to take a hammer and knock out the heads; but the Factor considering (that leave must be given to loofers to speak) knew better things, and kept the  
Goods



fold them for their full value; and when Accounts were to be made, instead of bringing to the Account of Wines, their heads knockt *per order*; worthily brought *per contra*, sold at their *intrinsique* value. Such faithful Ministers, I say, justly deserve that of our Saviour, *Well done*, &c. and be no more called Factor, but Merchant.

---



# CHAP. VIII.

## Of the Laws of Nature and Nations.

- I. Of the variety and contrariety of humane actions, and from whence they spring.
- II. Of the difficulties that happen in the obstructing our inquiry, in finding that which is lawful.
- III. Humane Laws from whence they flow, and wherefore the Laws of Nature are above ours.
- IV. No man naturally more a Judge than another, of Natures Laws.
- V. Nature's Laws are instituted for inward goodness, and virtue; but State Laws for quiet, and repose.
- VI. Of punishment required by Kings, against those that violate the Laws of Nature or Nations, though the same touch not them, nor their Subjects, and of punishing an equal.
- VII. Of punishing an equal, where that right fails, and the reasons of the same.
- VIII. Of Kingdoms equal in Power, cannot be commanded, but entreated, may be to execute the Judgement of another, by the Law of Nations.
- IX. That such power of executing the Judgments, or Decrees of any Foreign Nation, extends not to those of life or Honour.
- X. Of executing the Judgements given in a Kingdom, absolute, in another that is annexed by Conquest; and of the difference of that, and one by union.
- XI. Where that right fails in Plantations, and the reasons of the same.

I. **P**Lain Reason shews us, that Natural and Mathematical causes have more certitude then Civil; for Nature is alwayes uniform and alike in its operations: Hence fire alwayes burns, and never wets a stone, in the ayre naturally tends downwards, and never staves in the middle: In Mathematical causes ordinarily the forms, are such, as have no middle interposed, as betwixt even and odd; There is no *medium parti participationis*, betwixt a right line and a crooked; there is no middle sort of lines, thus two and two alwayes make four.

But Civil or Humane actions, proceeding from a mutable and various principle (the will\*) cannot alwayes be alike or uniform: And besides the will within, humane actions without, are subjected to different circumstances, and to infinite encounters; by reason of which

\* *In quid naturale sit postulandum in his que bene faciunt nam naturam se habent non in deprecatum, Arist. Polit. l.*

which their excessive number, they cannot be foreseen while Men are making Laws: Hence we may understand, wherefore it is said, *Omnis definitio in jure est periculosa*; and that *summum Jus* at some time may be found *summum injuria*; as to render a Man his Sword, when he is actually mad, &c. And as circumstance hath power to change the matter, so in the form of the action, it leaves in the middle a latitude, sometimes enclining to one extreme, sometimes to another.

*Non ideo id  
Deum velle,  
quia justum est,  
sed iustum esse,  
(that is due in  
Law) quia Deus  
voluit. Ana-  
xarchus apud  
Plutarchum in  
Alexandro.*

For Example, betwixt that which by precept we are commanded ever to do, and that which we are commanded aiever to do, is plac'd that which is lawful for us now and then to do, or not to do, in matters of our own right, so far as they seem expedient, or not expedient for us: Thus *Joseph* is called a just Man, because he thought of divorcing himself from *Mary*, though upon circumstances he would not, &c. But that which perplexes us all here is, that this *licitum* leans sometimes more to the one hand, sometimes more to the other, sometimes more to that which is absolutely good, sometimes more to that which is absolutely bad; from whence grow scruples & doubtings, whether in such twilight we really participate more of light than of darkness, that is, more of good than of bad.

*Vasq. 11. Con-  
trov. 5 4. 4:*

*Grotius de Ju-  
re Belli ac Pa-  
cis, lib. 1. cap.  
1. §. 14.*

**I II.** Humane Laws grow most out of these middle things, *ex mediis licitis*; and upon right examination we find, that a Man hath nothing else to dispose, for we (poor subordinate Vessels) cannot so much as deliberate *de absolute debitis*, and *absolute illicitis*, for they were in force before Man, Prince or People were in being, and God himself cannot now alter them, they flowing intrinsically, either from his Sanctity, Wisdom, and Justice, as he is a Creator and Governour; or else they flow from Nature, whose rule (according to Gods making it by that which is in himself) is right reason and honesty: This uprightness of Nature, together with that obligation we have to be subject to it, was not a moment after us, and therefore we could not determine any thing about it; for which cause we have not a legislative power to alter or diminish any of Nature's Laws.

**I V.** Saint Paul tells us, of those *who without any after knowledge of Gods revealed will or Laws to Man, were con-*

condemnable by those of Nature alone, in the punishing the Breakers whereof: No Man is naturally more a Magistrate than other; otherwise what meant Cain, when after his murder he cryed, *whosoever shall find me, will slay me.*

V. And though humane Laws remember us of those things, yet it is not as if they gave their original and primary force of obliging; yea, reason of State is not busied so much about inward piety and virtue, as it is about publick quiet and repose, or those actions which regard another Mans receiving right or wrong; and hence it is that great prodigality is not so severely punished as a little robbery; and that *malus homo potest esse bonus Civis*, the reason is, because though he may do himself wrong in his own rights, yet he may alwayes do other men right in theirs; neither is there any clear reason, wherefore those lesser sins and impieties, should be punished by any but God, who is wisest to know them, justest to weigh the merit of them, and powerfullest to punish them.

This is the State of Gods, and of Nature's Laws, to which we are all equally obliged, but our floating and circumstantiated Laws are only to give a rule, for an equal and mutual community in things, which God and Nature gave us to dispose of as we would our selves.

VI. Hence it is that Kings and such as have equal power with Kings, have a right to require punishment, not only for injuries committed against themselves or their Subjects, but for them also that do not peculiarly touch themselves, whatsoever the Persons that do unmanly violate the Law of Nature or of Nations, for the liberty by punishments to provide for humane Society (as hath been already mentioned) was in the hand of every man; but after Common-wealths, and Courts of Justice were ordained, it resided in the hand of the highest Powers, not properly as they are over others, but as they are under none: For subjection to others hath taken away that right; yea so much more honest is it to vindicate other mens injuries then our own, by how much more it is to be feared, that a man in his own by too deep

a re-

*Grotius de Jure Belli ac Pacis, lib. 2. cap. 21.*



a resentment may either exceed a measure, or at least infect his mind; however, his right of punishing an equal, remains still in those places where the People remain as in great Families, and not in Cities, or under some Government; and therefore those that have now possessions of any Parts of the New World, or *American* Isles, till they have either voluntarily submitted to a Government, or put them and their discovery into the hands, or protection of some Prince that may exercise power, there remains the old and natural right of punishing for offences: So likewise where Persons shall be assaulted by Pyrats on the Seas, if they be overcome, they may be immediatly executed by the Law of Nature; for otherwise there would be a Failure of power to punish such:

*Vide Ches. Py-  
racy §. 11, 12.*

10

*Leg. extat. D.  
quod metus.*

Besides the old natural Liberty remains in all Places, where are no Judgments; so where they are taken and brought to a Port, and the Judge openly refuses the Trial of them; or that a Trial of them cannot be had, without an apparent detriment, and loss to the Captors, Justice may be done upon them by the Law of Nature.

VII. Two Pyrats resolving to assault, and rob the next Vessel they meet with, (not knowing each others condition or design,) encounter, and the one happens to be overcome by the other; the question is now, whether the above mentioned right so far remains, as that the stronger may execute him that he hath overcome? Right reason dictates, that the evil doer may be punished, not who should punish him; but that Nature sufficiently sheweth, that it is most convenient to be done by him that is Superior; yet doth it not demonstrate this to be necessary, except Superior be taken in that sence, that the evil doer be thought to have made himself thereby inferior to any other, and to have as it were degraded himself from the order of men, into the number of Beasts subject to no man, and such are Pyrats, who have no other denomination but Night-wolves, or Beasts of Prey. By Nature it is ordained, *That the better command the worse*; And *Aristotle*\* saith, *The worse are provided for the use of the better, as well in Naturals as in Artificials*; It follows hence, that at least a guilty Person ought

*Non reddit faci-  
endo quod  
debet, reddit  
patiundo quod  
debet Philo.  
peccare dum  
sustinetur, ad  
penas servandas  
sustinetur.*

7 Pol. 14.

ought not to be punished by another equally guilty, to which purpose is that saying of Christ, *Whosoever of you is without sin (that is such sin) let him throw the first stone.* Pertinent is that saying, *The Sentence can have no authority, where he that judgeth is to be condemned;* From whence it follows, that the right of punishing in such case at such time ceases.

VIII. Kingdoms which are equal in power, and having no dependance on each other, cannot be commanded nor corrected of another; but if there be a question, to execute the Decree or Judgment of one in the Territory of the other, there may issue forth a Commission of entreaty, under the Seal of that Court where the Judgment was given, or at least under the great Seal of the Prince, directed to the Judges in that place where the Defendant is resident, and the Judge to whom the said Commission is directed may award execution, according to the Laws of Nations: And so it was adjudged, where one having recovered a Debt before the Governour of *Freisland*, Defendant upon that fled for *England*; the Governour at the Request of the Plaintiff, issued forth his Commission of Request, directed *Omnes Magistratus infra Regnum Angliæ rogans*, to make execution of the said Judgment; upon which the Judge of the Admiralty in *England* issued forth, an Execution of that Sentence, and the Defendant was taken, upon which he brought his *Habeas Corpus*, and adjudged the Sentence well executed by the Laws of Nations, and according to the Common Law of this Realm.

5 Jac. in B.R.  
Rolls Abridge-  
ment, *vers*  
case upon a  
*Habeas Corpus*.  
fo. 130.

So likewise if a Dutch-man takes up Goods at the Port of *London*, and gives a Note under his hand for the payment of the same, and then flies into *Holland*, the Vendor may apply himself to the Lord Major of *London*; and upon proof of the delivery, and Sale of the Goods; the Lord Major making a Certificat of the same, and sending it under the City Seal directed as above, they of *Holland* will, and do execute the same upon the Party.

Herein this last Case differs from the first; for by the former, if there should fall a question about the interpretation of the Judgment or Sentence, the same can-

not be done, for they are not to examine the same; and the reason is, least the Stranger be induced at another time to do the like, and so dissolve the Judgments whereof they should demand the execution, the which would be done more through jealousy of the State, then for any injustice in them; besides the Judgments or Sentences, which are matters of Record and of the greatest security in a Kingdom, the presumption that they were justly given shall always be understood.

IX But in the latter the same may be examined, that is, the Merchant may be heard as to his legal defence, either to the lessening or discharging the debt or damage, but against the testimony certified, no objection can be made, but the same is admitted as legally proved.

But if there be a question of honour or life, there they may not execute the Judgments of Forraign Judges, especially if they have not kown the merit of the causes or seen the Informations, or heard the Witnesses; but more especially in *England*, for there can in no respect whatsoever the life of a Man, (let his offence be never so hainous) be brought to punishment without a legal Tryall, \* and that by the producing of Witnesses *viva voce* to his face, yet Princes for the respect they bear each other, and for the Good of Justice, though they cannot at the bear request of the Judges of another Prince, put them to death; yet they may for exemplary punishments (which ought to be made upon the places were the fact was committed) yield the natural Subject to his natural Prince, unless the Prince to whom the fugitive is fled findes that he is unjustly pursued, for in such cases he is not bound to yield them; yea, he is forbidden by the Law of God to restore a bound-Man, which is fled into another Mans house, to avoid the fury of his Master.

X. And as the same is in cases Forraign, so likewise in those Estates that are under the *Crown of England*; and therefore if a Man recovers against † I.S. in the Kings Bench in *England*, and then the Defendant flies over into *Ireland*, the Judgement may be certified over into the *Chancery* in *Ireland*, and they may by *Mittimus* send it into the Kings Bench there, and they may award execution or otherwise

\* Coke 4 Inst.  
§ 38.

Soto de Just. &  
Jure lib. 5.  
qu. 1. Art. 7.

Satis judi-  
mus esse paucos  
aliquos mala  
ferre quam im-  
mensam multi-  
tudinem, Zo-  
naras.

† Pas. 24 Car.  
2 in B. R. in  
Hibern. inter  
Warde and  
Moore.

wise

wife the party may bring his Action of Debt on the same; so the like has been done for Decrees given in the *Chancery in England*, which have been exemplified under the Great Seal, directed to the Kings Lievtenant, for the putting the same in execution there; but in no case a Judgment given in *England* may be certified over under any other Seal, but that of the Great one.

But in *Scotland* it is otherwise; for that is a Kingdom absolute, and not like *Ireland*, which is a *Crown* annexed by *Conquest*, but the other is by *Union*; and though they be united under one Prince *ad fidem*, yet their Laws are distinct, so as if they had never been united; and therefore the execution of the Judgments in each other, must be done upon Request, as above, and that according to the Laws of Nations.

XI. But in *Colonies* or *Plantations*, which are reduced into the condition of great Families, have not this Right of Requesting, for they are governed by the Laws prescribed by the Souveraign of the same, who may set Jurisdictions, & make them places priviledged not to have the Persons attached or arrested in any other places, but within their own bounds; so likewise upon their first forming or Institution, may so declare that for any debt or Contract made or done in any place but in that of the same *Plantation*, they shall not be impleaded; and therefore in *Virginia* at this day, if a Man contracts a debt in *England*, flies to the same, he cannot be there impleaded: But if a Man takes up Goods, and carries the same over thither, there he may be sued in the place; so likewise if it can be proved he carryed over the money borrow'd, and this amongst others of the Laws and Constitutions of those *Plantations*, is preserved inviolably, the same being as it were a pledge and general safety, which is given to those Inhabitants, that shall resort thither, and there plant themselves for the good of [the Place; and although those that thither flie, by reason of great and unreparable losses, have contracted debts far beyond their ability to satisfy, a failer of which, in strictness of Law, may (if the Creditor pleases,) oblige their Bodies to Imprisonment; yet doth it not thence follow  
that



† *Ad Quintum*  
*Inst. l. 21.*

that the same ought to exacted; for though the *Car-*  
*cass* of Men may gratify the revenge of the Creditor,  
yet it never can pay the debt; wherefore if those ends  
by themselves in a morall estimation be not necessary;  
or, if other ends on the opposit part occur, not less  
profitable or necessary; or, if the ends proposed by Im-  
prisonment may be attained another way, it will then  
follow that if there be nothing of obligation on the  
Debtors part, to render himself a Prisoner to the Cre-  
ditor; that then if the same can or may be avoided by  
flight, the same in conscience may be done; according  
to that of Cicero †, *It was not fit perhaps to dismiss him*  
*being brought to Judgment, but that he should be enquired*  
*after, and brought to judgment, was not necessary.*

**FINIS.**

# A Short *Table* of the Principal Matters contained in this Book.

Distinguished by *Lib.* for the Book, *Chap.* for the Chapter,  
and *§.* for the Paragraph.

## Accessory.

**P**irat in the attempt kills a person, by the Law Maritime the Slayer onely is Principal, and the rest onely Accessories: but by the Common Law otherwise.

1. 4. 13

No Accessory to Piracy can be tryed by virtue of the Stat. 28 H.8. but he must be tryed in the Admiralty.

1. 4. 23, 26

## Acceptance.

Acceptance of a Bill of Exchange, what words amount to the same,

2. 10. 15, 20

## Actions.

Actions of Trover will lye for an 8th or 16th part of a Ship.

2. 1. 12

## Admirals.

The reason of their power, 1. 6. 5

Lib. Chap. §.

Admiral, where 10th part of the Prize is due to him. 1. 1. 9

Admiral hath no Jurisdiction infra Corpus Com. 2. 2. 2

He may issue forth Commissions for the assembling of Court Martials. 1. 14. 16

Execution of a Sentence of Death cannot be without his leave. *ibid*:

## Agreement.

Made with Forraigners by the Commissioners of the Custome-House, all persons Subjects shall have benefit of the same. 2. 15. 3

Agreement for Freight, where the same is determined by the fault of either party. 2. 4. 3

Cannot be made with a Mariner for the Freightment of the Vessel. 2. 4. 14

Averidge. Vide Contribution.

## Alien.

Not Capable of the Kings Pardon unless they were resident at the

F f f

time

## The Table.

Lib. Chap. 5.

time the same was promulgated, 3. 4. 7

Capable of taking, but not of enjoying: What they may hold; and if they depart, who will enjoy the same. 3. 2. 1

Cannot transfer to his Heir to what he is disabled to hold. 3. 2. 2

Alien marries an English Woman that is seized, the Issue shall inherit. 2. 2. 6

Though the Issue be born beyond the Seas shall inherit. 3. 2. 7

Born in the Kings Dominions not Aliens.

Purchases Lands with a Natural born Subject to them and their heirs, they are Joynt-Tenants, 3. 2. 11

Aliens resident, and Aliens travelling through France, the difference between them as in reference to their Estates. 3. 3. 8

Administration of an Alien's Estate may be committed to the next of Kin. 3. 3. 9

Difference between the Crowns of France and England in reference to the Births of persons born in places which they formerly possess. 3. 3. 10

Alien in League his Action is only to be abated; but in Enmity may conclude in barr, 3. 4. 1

### Alliances.

Alliances not determined by the death of the Prince. 1. 7. 6

Lib. Chap. 5.

### Ambassadors.

Where obliged not to Treat with any other but the Prince. 1. 7. 4

How Regulated at the Congresse, 1. 7. 5

Their Function. 1. 10. 1

How protected though the Messengers of Rebels or Thieves. 1. 10. 2

Violence or killing them how punishable. 1. 10. 3, 15

May be rejected and not received, and when. 1. 10. 4

Where punishable by the Lawes of Nations. 1. 10. 5, 6

14. 9

Are not to render account to none but to them that sent them, 1. 10. 6

Not bound by any thing that is not *malum in se jure gentium*, 1. 10. 10

Yet obliged to the formalities of Law, 1. 10. 11

He may have Sovereign Jurisdiction over his Family by the concession of him, with whom he resides, 1. 10. 12

His Goods and Moveables cannot be seized on for any Civil matter, 1. 10. 13

Ambassadors of Venice cannot receive any Present or preferment from any Foreign Prince or State. 1. 10. 16

Bailio at Venice is the Ambassador for that Republique, 1. 10. 6

### Anchors.

## The Table.

Lib. Chap. §.

### Anchors.

Anchors may be placed for convenience against the Owners will in other places. 2. 9. 7

Not fastning of Buoyes to them, punishable, 2. 7. 7

### Appeal.

Appeal lyes from the Commissioners of Assurances to the Lord Keeper, 2. 7. 16

### Assurance.

Assurances private and publique are both alike as in reference to the obtaining satisfaction, 2. 7. 1, 2, 3

May be made on Ships or other things as well as Merchandize, 2. 7. 4

Assurors are discharged upon the alteration of the property. 2. 7. 13

They are not to answer for a detriment that was occasioned purely by the Laders means. 2. 7. 15

### Attachment.

Attachment of the Lading cannot be made in the Masters hand, 2. 3. 18

### Attaint.

The Law takes notice of the person Subject, but of an Alien è cont<sup>o</sup> 3. 2. 2

Lib. Chap. §.

No corruption of blood upon an Attainder of Pyrracy. 1. 4. 23. 26

### Barretry.

Barretry of the Marriners, who shall be responsible for the same. 2. 3. 13

### Battel.

Goods or Ships gain'd therein, where the Owners are divested of their property. 1. 1. 7  
But regain'd by a Ship of Warr, the Property is preserved 1. 1. 9

### Blanks.

Filling them up against Law, 2. 10. 27

### Beats.

Ship Boat not forfeited by the Pyrracy of the Ship. 2. 1. 8

The Duty of Boats and all other small Vessels in time of Warr and in Battail. 1. 14. 24

### Bottomery.

From whence so called, 2. 11. 12

### Buoyes.

Not putting them to Anchors subject the Master to punishment, F ff 2 and



## The Table.

Lib. Ch. 5.

Lib. Chap. 8.

and answer the damage. 2. 9. 7

Within the Body of the County, 2. 14. 8

Port of London its extent, 2. 14. 9

### Bulk.

When the same may be broke, 2. 15. 1

### Butlerage.

What, and when payable. 2. 8. 8

### Canon.

**C**anon designed for the Relief of a City or Fleet, cannot in a Storm be flung over-board, 2. 6. 15

### Captives.

Where they may be justly kill'd, 1. 14. 12

How that power is governed, 1. 14. 17

Where he that dyes in it is supposed to dye before his being taken, 3. 1. 2

Children born before their being taken are free. 3. 1. 2

Captive General is immediately the Prince's Prisoner. 3. 1. 5

### Ports and Cinque-Ports.

Ports in England, 2. 14. 18

Free of Prisage. 2. 8. 10

Members and Creeks, { What are meant by them, 2. 14. 7

### Clergy.

Not allowable to a Pyrat for Py-racy on the High Sea. 1. 4. 23  
But in a Creek or Port it is, 1. 4. 24

### Commanders.

Their Duties in time of Fight, 1. 14. 13

### Commissions.

Commissions awarded to enquire of Depridations, 1. 2. 24  
And to give satisfaction. 2. 4. 28  
Commission for Warr in what respect. 1. 3. 5  
Commissions qualifie the Caption, 1. 4. 14

### Communion.

Communion of Pastures in our first Parents, 1. 1. 3

### Confederates.

Differents amongst them how determined. 1. 8. 4  
Confederates how bound to defend each other. 1. 7. 9  
Of the Succours they are to lend, 1. 7. 15  
May ayd one another against one anothers Confederates, 1. 7. 16  
Constant

## The Table.

Lib. Chap. §.

### Consanguinity.

The various degrees of the same, 3. 2. 8

In all Collateral descents except between Brother and Brother, the half blood does inherit, but between them the half blood does impede. 3. 2. 8

### Contraband.

Contraband Goods, where the same may be seized. 1. 1. 15

### Contracts.

Contracts between Princes though by force oblige. 1. 8. 9

Contracts between Merchant and Master where valid, and where not 2. 4. 3, 6, 7

Contract is not determined if the Ship be taken by an Enemy, and afterwards retaken. 2. 4. 12

Contract for Freight cannot be made with a Marriner. 2. 4. 14

Charter-parties settle the Agreement, and the Bills of Lading the Contents 2. 4. 7

Contracts where they have their inception from Sealing. 22. 11. 9

None of the Ancestor can bind the person of the Successor as to point of slavery. 3. 1. 7

### Contribution.

Contribution for Moneys lent on

Lib. Chap. §.

Bottomery 2. 11. 10

Contribution, the remainder of the Lading are as tacitly obliged to the same, as for Freight. 2. 6. 7

Two Ships encounter anawares, the Contribution is to be proportionable 1. 6. 10

Contribution shall not be made if the Sayls or Masts are broken or lost in the Storm; but if cut down, otherwise. 2. 6. 12

No Contribution but where the Ship arrives in safety. ibid.

Contribution in cases of Necessity, 3. 5. 26

Contribution a main Ingredient in Leagues, and how regulated, 1. 7. 9

Contribution cannot be had by one whose Goods are taken by Reprizal 1. 2. 23

Contribution where to be made for the Redemption of the Master 1. 4. 5

Contribution may be paid to both parties. 1. 12. 6, 7

### Corporations.

When introduced for Merchants in England 3. 5. 2

Of those Trading to India from England and Holland 3. 5. 5

### Countermand.

May be made by the drawer at any time before the money becomes due 2. 10. 22

fff 3

Courts.

## The Table.

Lib. Chap. §.

Lib. Chap. §.

### Courts.

By the Statute of H. 8. Courts  
may be erected for the Tryal of  
Pyracy. 1. 4.

Where the Admiralty hath Juris-  
diction of the principal, the  
Courts at Common Law will re-  
mit them their Accessory. 1. 4. 28

Court appointed for the Trying of  
Merchant Strangers Causes ac-  
cording to the Custome of Mer-  
chants 2. 12. fol. 303

### Customes.

Goods Wreck't pay no Customes,  
2. 13. 11

Customing Goods in another mans  
name, the penalty 2. 8. 8

The King is entitled to his Duty  
upon breaking of Bulk. 2. 8. 9

Cannot be imposed without Act of  
Parliament 1. 12. 1, 2, 3

Maybe Ferm'd out 2. 12. 3

The Antiquity of Customers,  
2. 12. 5

Customes what is meant by the  
same 2. 12. 6

Of Magna Custuma, and for what  
given ibid.

Parva Custuma on what Conside-  
rations given 2. 12. 7

How the same is governed. 2. 13. 6, 7

### Cowards.

To suffer death without mercy,  
11. 14. 12, 15, 17

### Damages.

TO be repaired out of his or  
their Estate that commit an  
Injury; if not, then the same be-  
comes a National Debt, 1. 2. 12

### Denizen.

The Issue born of English-man on  
the Body of a Forraigner beyond  
Seas, is a Natural born Subject,  
3. 1. 8

Denization by Letters Patents of  
France, remove the total disabi-  
lity; but in England è cont'

Two Denizon Brothers, one pur-  
chases Lands and dyes, the other  
may inherit. 3. 3. 11

Not capable of Honour. ibid.

### Derelict.

Cannot be of any Goods cast over-  
board to lighten the Ship. 2. 6. 15

Of places that are possessed one day,  
and abandoned another, make  
not a Derelict 3. 5. 3

### Deserters.

May be slain by any man by the  
Lawes of Nations. 1. 6. 9, 12,  
15

Coward suffers death without mercy  
1. 14. 17

Vide Derelict.

Disatis

## The Table.

Lib. Chap. §.

### Disability.

*Ships disabled in Battail are not to be relieved till the Enemy is beaten* 1. 14. 16

*Disability of the Father binders not but one Brother may be Heir to the other* 3. 2. 8

*No disability in an Alien bringing an Action in Auter Droit,* 3. 2. 9

*An Alien Infant disabled to be a Merchant Trader in England,* 3. 2. 11

*Disability not cured in an Ancestor, without actual naming them,* 3. 3. 3

### Discipline.

*Orders must be obeyed, and they that break them may be punished though the act succeeds well,* 1. 14. 14

### Disclaimer.

*By the Predecessor shall barre the Successor* 2. 8. 7

### Discent.

1. The Rules that govern them, 3. 2. 3
2. Discents according to the Canon Law 3. 2. 4
- Impeded in an Ancestor from whom and to whom will hinder the discent,* 3. 2. 5

Lib. Chap. §.

### Disfranchisement.

*The ancient way of compleating the same* 3. 1. 9

*Cannat now be done to a Freeman without lawful Tryal* 3. 1. 9

*The various wayes now used by the Laws of England* 3. 1. 9

### Dominion.

*Dominion universal* 1. 1. 1  
*Where acquired lawfully by Warr,* 1. 1. 7

*Division of Estates first among Families* 1. 1. 3

*Dominion personal where the same may be* 1. 6. 5

*Dominion of things began from natural possession.* 1. 13. 10

*Not founded in grace* 2. 11. 3

### Dower.

*The Wife of one in Exile may bring a Writ of Dower* 3. 1. 10

*An Alien Wife cannot have the same unless a Queen* 3. 2. 12

*A Jew born in England takes a Jew born in England, she cannot have Dower.* *ibid.*

### Ecclesiastical persons.

**B***Y the Canon Law exempt from Reprizals* 1. 2. 16  
*So likewise from the Sword in time of Warr,* 1. 14. 18  
*Election.*



## The Table.

Lib. Chap. §.

### Election.

Given to the Merchant to charge ei-  
ther Master or Pylot for Damage  
done. 2. 9. 4  
The like to charge the Master or  
Owners ibid.

### Embargo.

Embargo when by the Lawes of  
England, 1. 1. 11  
Goods of a Friend in the hands of  
an Enemy not subject to an Em-  
bargo 1. 1. 12  
Goods laid aboard are Embargo'd,  
yet Freight shall be paid 2. 1. 12

### Enemy.

Goods taken from them become the  
Captors 1. 13. 10  
Enemies Goods and Merchandize  
taken by them, and afterwards re-  
taken, alters the property 1. 1. 7  
Enemies what is lawful to do a-  
gainst them 1. 1. 9  
If taken in the Realm are to be tryed  
by Martial Law 3. 4. 6  
To relieve him by a Souldier in pay  
punished with death 1. 13. 8

### England.

None could Trade thither without  
leave 1. 5. 7  
English no Nation more tender of  
their honour 1. 5. 9

### Exchange.

Exchanges the various sorts. 2. 10. 4

Lib. Chap. §.

Bills on the same are to be governed  
by Custome 2. 10. 14  
What amounts to an acceptance,  
2. 10. 15  
Once accepted not to be revoked,  
2. 10. 28  
Accepted for the honour of the draw-  
er, ibid.

### Executor.

Executor of a Forraigner shall not  
have the benefit of being dischar-  
ged of Prisage, though he is a Ci-  
tizen of London 2. 8. 5

### Exile.

The various wayes of banishing a  
Subject. 3. 1. 9  
What a man forfeits by the same;  
3. 1. 10  
Exile of the Father hinders not the  
Freedom of the Son. ibid.

### Factor.

**F**ACTOR Enemy, the Goods of a  
Friend in his possession not  
subject to an Embargo 1. 1. 12  
Factor contracts for another Port,  
and before departure the Ship  
takes fire, the Assurors are dis-  
charged 2. 7. 13  
Factor super Cargo cannot alter  
the Voyage agreed on without  
special Commission 2. 4. 5  
Factor super Cargo ought to be con-  
sulted with before there be a  
casting

## The Table.

Lib. Cha. 5.

casting over-board 2. 6. 1  
 He ought to give notice if there be  
 any Plate or Jewels in Boxes or  
 Trunks 2. 6. 15  
 Factor Enemy the Goods in his pos-  
 session not subject to Reprize,  
 1. 1. 12  
 Cannot give time 3. 7. 3  
 Principal, where obliged by his act,  
 and where not 3. 7. 4

### Fals.

To the Officers of the Custome-house  
 how governed 2. 13. 12

### Felonyp.

The wilful casting away of a Ship  
 by a Master that had taken up  
 Moneys on Bottomery 2. 11. 11  
 Stealing of Cables or any of the Ships  
 Furniture belonging to the King,  
 punished as Felons 1. 14. 11  
 Stealing of men at Sea, Felony.  
 1. 4. 15

### Fishermen.

Fishermen ought not to Fish in the  
 Night with Lanthorns or Lights,  
 2. 5. 2

### Flagg.

But a consecutive acknowledgment of  
 the British Seas 1. 5. 7  
 Demanded peremptorily by the En-  
 glish, and punished as Rebels if  
 refused 1. 5. 9  
 How the same differs from that  
 claymed by the French 1. 5. 11

Lib. Chap. 5.

The Right how far it is to be paid,  
 1. 15. 3  
 How punishable for the neglect,  
 1. 15. 5

### Force.

Used by persons in opposition to Ju-  
 stice, may occasion Reprisal,  
 1. 2. 11

### Forfeiture.

The Forfeiture of Ships drawes not  
 the loss of the Boat 2. 1. 8

### Forraigners.

Have a Right to compell where Ju-  
 stice is denyed in the ordinary  
 way, which Subjects have not,  
 1. 1. 9  
 Forraigners Robb'd at Sea have a  
 right to prosecute within the Stat.  
 of 28 H. 8. 1. 4. 7  
 So for the like offence to be punished  
 by the Statute of 25 E. 3.

1. 4. 8  
 Forraigners in enmity together with  
 some English commit Pyracyp, how  
 punishable 1. 4. 9  
 Forraigners committing Pyracyp on  
 the British Seas, punishable by  
 the Crown of England, and not  
 elsewhere. 1. 4. 10

Vide Aliens.

### Fraud.

Fraud and Covinous Assurance is  
 void 2. 7. 5. 15  
 Freeman.

## The Table.

Lib. Chap. §.

### Freeman.

*How many wayes he may be made  
of City or Burrough.* 3. 1. 11  
*What makes a compleat Freeman,*  
ibid.

### Freight.

*Freight where the same may be re-  
fused by the Master, and where  
not* 2. 4. 15  
*Freight is the Mother of Wages,  
so likewise the Father of Da-  
mage* 2. 1. 9  
*It is governed by the Contract,*  
2. 4. 2  
*It shall be paid though the Ship  
proceeds not her Voyage, if once  
she laded* 2. 4. 4  
*Freight becomes due though there  
be a sailer of compleating the Voy-  
age according to the time agreed  
on* 2. 4. 5  
*Freight not due if the Vessel is  
Robb'd* 2. 4. 6  
*Out and in not due till the whole  
Voyage be compleated.* 2. 4. 8  
*If any fault arises from the Freigh-  
ter, he shall answer.* ibid.

### Fugitives.

*Fugitives, the houses of Ambassa-  
dors are Sanctuaries for them,*  
1. 10. 12  
*Whether they may be delivered up  
flying into another Countrey,*  
1. 11. 3

Lib. Chap. §.

*Persons that have wronged Kings  
of their Revenue, have been deli-  
vered up when they become Fu-  
gitives* 1. 11. 7  
*Are received by the Laws of Warr,*  
1. 14. 20

### Generals.

**G**ood Generals, one of the  
greatest of happineses that  
can come to a Prince, 1. 13. 1  
*Such are followed to death by the  
Army* ibid.  
*Not to be slighted, and of the Cruel-  
ty shewed to Belisarius* 1. 13. 3  
*When taken in Battail they are not  
the Captors but that Princes or  
States by whose Subject they  
were taken.* 3. 1. 5

### Goods.

*When the property of the same is  
altered by the Lawes of Arms,*  
1. 1. 7  
*Of a Friend in the custody of an  
Enemy not subject to Reprize,*  
1. 1. 12  
*Goods counterband where the same  
may be subject to reprize,*  
1. 1. 15  
*Of an Enemy may as well be spoyl'd  
as taken* 1. 3. 1  
*What may be made Prize, and what  
not* 1. 3. 11, 12  
*Goods secretly brought ashboard,  
if lost oblige not the Master,*  
2. 1. 17  
But

## The Table,

Lib. Chap. §.

*But if secretly brought in by the Master after a Ship is Freightēd, if damage happens to the rest he shall answer; nor can those goods if cast over-board be subject to an Averidge* 2. 4. 9

*Goods on a mans Body not subject to an Averidge* 2. 6. 4

*Goods how estimated for the settling an Averidge.* 2. 6. 14

*Exported what allowances to be made* 2. 3. 2, 5

### Habitation.

**I**N time of Fire or Warr may be pulled down 1. 1. 4

*Habitation or Domicil and not Originatirn or Nativity that subject men to Reprizal* 1. 2. 14

### Havens.

*The same ought to be kept in peace* 1. 1. 10

### Hostages.

*He that gives them is freed from his faith* 1. 8. 6

*Are not to be slain generally; may be put to death if the Contract be broke.* 1. 14. 18

### Impiety.

**I**mpiety punished a Shipboard, 1. 13. 4

Lib. Chap.

### Uncertainty.

*Of the Port, as if a blank is left in the policy, if a loss happens, the parties are without remedy,* 2. 7. 14

### Indictment.

*For PyracY upon the Statute, must mention the same to be done at Sea* 1. 4. 23

### Indiction.

*If necessary* 1. 1. 11

### Infidel.

*Cannot be a witness, yet may bring an Action* 3. 4. 7

### Innocent.

*Whether such a person may be deserted to prevent a Warr* 1. 11. 5

*How obliged to render up himself,* 1. 11. 7

### Interpellation.

*Interpellation having gone and no satisfaction returned, whether Warr may be begun* 1. 1. 14

### Joynt-Traders, Vide Societies.

*Joynt-Traders, the acceptance of a Bill*



## The Table.

Lib. Chap. §.

*a Bill by one will bind the other,* 2. 10. 18  
*But accepted by one Member of a Company it cannot oblige another*

### Justice.

*Stopt, and Judges not able to protect men from Violence, denotes Warr* 1. 1. 6  
*Denied or delayed in the ordinary course to a Forraigner gives right of Reprizal* 1. 2. 9, 11  
*In matters doubtful the presumption is alwayes for the Judge,* 1. 2. 10

### King.

**K***ing's Standard appearing in the Field denotes a Warr,* 1. 1. 6  
*King not entitled to the Copyhold Land of an Alien* 3. 2. 11

### Law.

**O***F Nature, what thing may be acquired in Warr by the same, and also by the Lawes of Nations* 1. 1. 6  
*Law Civil cannot command any thing that the Lawes of Nations forbids* 1. 6. 1  
*Lawes of Nations broken by an Ambassadeur subjects him to pu-*

Lib. Ch. §.

*nishment* 1. 10. 5  
*Judgments how executed by the Lawes of Nations* 3. 8. 8

### Larceny.

*Where the same may be in a Master,* 1. 4. 16

### Leagues.

*Leagues made with Princes though they have lost their Kingdome, remain* 1. 7. 18  
*Leagues remain though the Republique is changed into a Monarchy* 1. 7. 17  
*Leagues the Oath binds the person, and the Promise the Successor,* ibid.  
*Leagues confirmed in England by Parliament, and are often Offensive* 1. 7. 7  
*The cause ordinary for which they are made* 1. 7. 8  
*Defensive Leagues*  
*Leagues how Ratified.* 1. 7. 12  
*How broken, and the ordinary cause.* 1. 7. 13, 14  
*How to be interpreted* 1. 8. 6

### Loadmanage.

*What.* 2. 7. 7

### London.

*Discharged of Prize* 2. 8. 3  
*The Extent of the Port* 3. 14. 9  
*Keyes and Places lawful for landing*

## The Table.

Lib. Chap. s.  
*ing in the same* 2. 14. 10  
*Charter confirmed* 3. 1. 10

**Lotts, Vide Mutiny.**

### Manumission.

**W**hen first introduced. 3. 1. 8  
*The various ways of making*  
*Free.* ibid

### Marriners and Fishermen.

*Pressed for the Service are not to be*  
*employed but as Marriners,*

1. 6. 4

*Their Wages dye with the Ship,*

2. 3. 7

*Marriners their Suits favoured by*  
*the Courts at Common Law,*

2. 3. 8

*May be corrected by their Master or*  
*Captain*

2. 3. 12

*Marriner cannot contract for Freight*

2. 4. 14

*Marriners what share they have in*  
*the Goods of a Passenger deceas-*  
*ing in the Voyage.*

2. 4. 11

*Marriners their faults and punish-*  
*ments*

1. 13. 4. 5

*Marriners a Shipboard their va-*  
*rious Offices and Employes.*

2. 3. 1

*Their faults how punished.*

2. 3. 2

*The mutual Ayd they must afford*  
*one another*

2. 3. 3

*Not to be arrested a Shipboard, nor*

Lib. Chap. s.  
*are they to depart thence when*  
*once entertained.* ibid.  
*Obliged to make satisfaction.* 2. 3. 4

### Masters of Ships.

*Where his knowledge of the Goods*  
*may involve the whole Lading,*

1. 1. 12

*Master of a Ship hang'd up for at-*  
*tempting to relieve a place block'd*  
*up*

1. 1. 14

*Master of a Ship becomes a Pledge*  
*in the hands of Pyrats for the*  
*redemption of the Ship, the same*  
*is made lyable for his redemption,*

1. 4. 5

*Master brings Goods to a Port and*  
*then runs away with them, not*  
*Pyracy*

1. 4. 16

*Master responsible for offences to his*  
*Owners*

2. 1. 8

*Where he may release the Freight,*  
*and where not*

2. 4. 15

*Where his act obliges the Owners,*  
*and where not.*

2. 1. 10

*Master hath no Property in the Ves-*  
*sel by being constituted Master,*

2. 2. 1

*Master becomes lyable immediately*  
*by the lading the Ship aboard,*

2. 2. 2

*So likewise if he receives them, if*  
*lost he must answer,*

2. 2. 3

*His Duty*

2. 2. 4

*He may borrow Money on the Ship,*

2. 2. 14

2. 11. 10

*The Master is obliged to the cure*  
*and preservation of his Mar-*  
*riners*

## The Table.

Lib. Ch. §.

finers	2. 3. 2
He is obliged for the Barratry of his Marriners	2. 3. 13
Master not lyable unless the Lading is brought aboard by his and his Pursers consent	2. 3. 17
Nor can the same be attached in his hands	2. 3. 18
If he transades the Lading, and the Ship miscarry, he shall answer; but if both, & cont'	2. 4. 4
Master to answer for insufficient Ropes in hoisting out the Goods,	2. 9. 5
Masters obliged by the act of their Servants	2. 10. 27

### Members.

*What is understood by them.* 2. 14. 7

### Merchants.

Honour justly due to Merchants,	3. 9. 1
The more Honourable the persons are, the more reputation they bring to their Country.	3. 6. 2
All Nations professing the same, may freely Traffique for England	2. 12. 1
Merchants Strangers their Immu- nities granted	2. 12. 9
An Alien Infant cannot be a Mer- chant Trader in England, nor can he enter Goods in his own name,	3. 2. 11
No survivor amongst Joynt Mer- chants	3. 6. 14
May depart without leave	3. 6. 15

Lib Chap. §.

### Money.

Is the civil measure of things,	2. 11. 5
Its necessity in Society	2. 11. 6, 7
Advanced on a contingency is no Usury	2. 11. 13, 14

### Mutiny.

To be punished with death, how the same is to be governed in such extremity	1. 14. 17
Not to Mutiny if the Victuals are naught	1. 14. 23
They may be Executed immediately	1. 14. 26

### Naturalization.

Cannot be in England without Act of Parliament	3. 3. 2
It removes all the disability or in- capacity in the Ancestor.	3. 3. 3
Naturalized in Ireland operates not in England; but in Scotland otherwise.	3. 3. 4

### Necessity.

The Master may translade without Commission	2. 4. 4
Necessity is excepted out of the Law of Dominion	1. 1. 4
Ships in Necessity may take things necessary from another by force of Arms	1. 4. 18
The right of Nature in such extre- mity	

## The Table.

Lib. Cha. 5.

*mity where let in.* 3. 5. 5  
*In such Exigencies how written*  
*Laws are to be interpreted,*  
 3. 5. 7

### Neutrality.

*Neuters how they ought to carry*  
*themselves in Warr* 1. 1. 14  
*Neuters their Ships in the Ports of*  
*the warring Parties, whether be-*  
*ing forced to fight, is a breach of*  
*the League* 1. 1. 15  
*Neutrality what and how made,*  
 1. 9. 6  
*The advantage of the same* 1. 9. 7  
*Neuter neither purchases Friends,*  
*nor frees himself from Enemies.*  
 1. 9. 7  
*It works no wrong,* *ibid.*  
*If prest, for whom must he declare,*  
 1. 9. 8

### Oath.

**H**E that gives it to Pyrat is  
 bound to the performance,  
 1. 2. 6  
*Oath may be administred by the*  
*Judge Advocate* 1. 14. 27

### Office.

*King not entitled to the Lands of*  
*an Alien till Office found; but*  
*in Treason è cont'* 3. 2. 10

Lib. Chap. 5.

### Officer.

*Quarrelling with how punished; if*  
*stuck, the party offending suffers*  
*death* 1. 14. 22

### Owners.

*Owners may Freight out their Ship*  
*against the consent of each other,*  
 2. 1. 2  
*Cannot be obliged to continue Part-*  
*nership* 2. 1. 3  
*The Master is obligable by them,*  
 2. 1. 4  
*Not obliged to joyn in an Action,*  
 2. 1. 5  
*Property of the Ship follows the*  
*Owners of the Materials, not of*  
*the Builders, if it be built all*  
*with their Goods* 2. 1. 7

### Package.

**O**N what the same is to be paid,  
 and what Packers are to  
 take 2. 13. 4

### Pardon.

*Of Felonies extends not to Pyracý,*  
 1. 4. 23, 25

Petty



# The Table.

Lib. Chap. §.

Lib. Ch. §.

## Petty Averidge.

When due 2. 2. 6

## Planters.

Of the Right of Planting 3. 5. 2, 3  
Where they may dispose of the same  
by Will 3. 5. 4

## Plunder.

Souldiers so doing may be slain by  
any man whom they shall attempt  
1. 6. 10

## Ports.

What, 2. 14. 7  
Within the Body of the County,  
1. 4. 23  
Robbery committed in them not Py-  
racy ibid.  
Ports of Nations in Amity may  
deliver Ships brought in there by  
an Enemy 1. 1. 9  
Neuter Ports, the peace of them  
ought to be preserved 1. 2. 17  
1. 1. 10  
1. 3. 7  
Ports not to be visited after a Warr  
begun by an Enemy 1. 3. 11  
Ships driven in by Stress of wea-  
ther not subject to reprice 1. 2. 1  
Peace of them ought to be kept,  
1. 5. 14

## Possession.

The highest Title that men can pre-

tend to what they enjoy 3. 5. 1  
Yielded without fighting to be used  
civilly 1. 14. 12  
Prize Ships may not alwayes be  
possest 1. 13. 10  
Possession of a Ship creates no Title  
2. 1. 11

## Poundage.

What, and how the same may be le-  
vied 2. 11. 10

## Prerogative.

The King hath to dig in any mans  
ground for Salt-Petre 1. 1. 4

## Prescription.

Its uncertain beginning 1. 15. 14, 15  
Depends not on the Corporeal but  
Civil possession 1. 5. 13  
Avails not in things that have been  
stolne 1. 4. 20

## Prest.

The punishment of those that run  
away 1. 6. 7

Vide Marriners.

## Primage.

When payable 2. 9. 4

## Princes.

Responsible for Injuries publique,  
and in prudence ought to redress  
Injuries

## The Table.

Lib. Chap. S.

Injuries private, especially to  
Forraigners 1. 2. 8

Responsible by the Lawes of Nature  
for the neglect of suppressing Py-  
rats 1. 4. 2

Not bound to Treat personally with  
Ambassadors, 1. 7. 4

The death of one determines not  
the Alliance 1. 7. 6

Their wisdom is to be considered  
in Leagues 1. 7. 9

Are not to examine one anothers  
others Title, but it's enough they  
are in possession 1. 7. 18

Though driven out of their Country,  
may consent that Commerce  
shall be forbidden to his Subjects  
1. 9. 4

The declared will of them cannot  
make all those of our Acts Sins,  
1. 12. 8

Nor can their Interdiction if dis-  
obeyed when their Subjects are  
possessed by their Enemy, create  
an offence ibid.

One of their Chiefest happineses is  
a good General 1. 13. 1

How they govern themselves in Trea-  
ties 1. 7. 1, 23

Bound to render Honour to their  
Equal ibid.

### Peace.

Ought to be purchas't at any rate,  
and to be maintained with the  
greatest Faith. 1. 15. 18

### Prescription.

Silences all Tribuna's, though its

Lib. Ch. S.

Inception is not known 1. 15. 14

It's necessary to have the force of  
Right 1. 15. 15

### Prisage.

Not grantable away without Act of  
of Parliament 2. 8. 1

Not due till breaking of Bulk 2. 8. 3

Prisage becomes due if the property  
be changed though the Goods are  
not landed 2. 8. 6

### Privilege.

The Hanse Towns had several, and  
when they determined, and upon  
what occasion 2. 12. 14

Charta Mercatoria on what Consi-  
derations the same was granted,  
2. 12. 7

### Prize.

Prize the 10th part justly due to  
the Admiral 1. 1. 9

Equally divided amongst the Cap-  
tors 1. 2. 20

Prize Ships their Papers are to be  
preserved 1. 13. 9

May not alwayes be possess 1. 13. 10

### Proclamation.

Whether necessary before a Warr,  
1. 1. 14

Having passed, where the Goods of  
Friends may become Prize,  
ibid.

G g

Prohibition.

## The Table.

Lib. Cha. s.

### Prohibition.

Goods prohibited may subject the  
Vessel to a Forfeiture 2. 2. 17

### Property.

When first introduced 1. 1. 3  
Where the Property of the Vessel  
followes the Owners of the Ma-  
terials 2. 1. 7  
The property of the Ship and Goods  
of a Pyrats becomes his that takes  
them 1. 4. 11, 19  
Legalis Captio, difference between  
that and Spoliatio, as in refe-  
rence to the changing of property  
1. 1. 9  
Cannot be questioned but by the  
Common Law 1. 10. 11  
Can be questioned in the Admiralty,  
if before sale the Ship was sold  
bona fide 2. 1. 9  
Property of Goods altered by being  
taken and retaken in Warr,  
1. 4. 19  
Property of Goods taken by Piracy,  
altered by sale in a Market Overt  
1. 4. 21

### Protection.

The true Ensign of Liberty 1. 5. 2  
What and by whom accepted,  
1. 8. 2

### Protect.

Subjects every of the Drawers that

Lib. Chap. s.

Subscribed to answer the Summe  
drawn 2. 10. 16  
Protect the use and meaning of the  
same 2. 10. 31

### Plott.

When he is discharged of his Duty,  
and how obliged to answer for  
negligence or wilfulnesse,  
2. 9. 1, 2, 3

### Pyrats.

What 1. 4. 1  
Improperly called Enemies, yet hold  
an equality 1. 4. 3  
Are not to have succour 1. 4. 4  
Overcome in the Ocean may be im-  
mediately executed by the Lawes  
of Nature 1. 4. 11  
Or, brought to a Port and the Judges  
refuse or the Captors cannot stay  
without prejudice, may be execu-  
ted 1. 4. 11  
Pyrats onely questionable properly in  
that Country where the Ship is  
carried 1. 4. 14

### Quarter.

Not to be given to persons taken  
in Fire-Ships 1. 14. 12  
To demand it not repugnant to the  
Oath called Sacramentum Mi-  
litare 1. 14. 13

### Rebellion.

## The Table.

Lib. Chap. §.

### Rebellion.

**I**N those that shall not strike to the  
King of England's Flagg,  
1. 5. 8

### Reception.

Reception from an Enemy what is  
gain'd by the same 1. 1. 7

### Release.

Of the Master where it binds the  
Owners 2. 4. 15

Renunciation of the Lading when it  
may be 2. 4. 13, 17

### Relief.

Appointed for Marriners and mai-  
med Souldiers. 1. 14. 28

### Religion.

Whether lawful to plant the same  
by force of Arms 1. 1. 5

### Renegado.

The Policy of the Turk in making  
them 3. 1. 6  
Cannot be a Witness by the Lawes  
of any Christian Kingdome, 3. 4. 7

### Reprizals.

From whence derived 1. 2. 1  
Cannot be against the Goods of Am-  
bassadors 1. 2. 16  
Not good without lawful Warrant  
or Commission 1. 2. 1  
Ships taken by virtue of the same  
divests not the Owners of their

Lib. Ch. §.

property, unless carried infra pre-  
sidia 1. 1. 7, 8

The causes precedent before the same  
are grantable 1. 2. 6

Reprizal Ordinary and Extraor-  
inary by the Lawes of England,  
1. 2. 7

Persons exempt from the same,  
1. 2. 16

Reprizals granted and they commit  
Pyracy, they forfeit their Vessel,  
1. 4. 2

Captains of Ships of Reprizal com-  
mit Pyracy, cannot oblige the  
Owners for satisfaction 1. 14. 18

### Request.

Ought alwayes to precede Reprizal  
1. 2. 8

Letters of Request allot time cer-  
tain 1. 2. 13

The same being made may sufficient-  
ly impower one Nation to execute  
the Judgments of another,  
3. 8

### Restitution.

Where the same may be made of  
Ships regain'd from an Enemy  
1. 1. 7, 8

Restitution of Ships where the  
same ought not to be done by Na-  
tions in Amity. 1. 1. 9

Restitution of the overplus, the  
debt and damages satisfied,  
1. 2. 22

Restitution only to be made in that  
Country whither the Vessel is car-  
ried 1. 4. 14

¶ g g 2

Scavage.



# The Table.

Lib. Chap. 5.

Lib. Ch. 5

## Scavage.

**W**Hat, and for what due,  
2. 14. 1

## Sea.

Princes may have an Exclusive  
Property in the same 1. 5. 11  
It is a common High-way, and such  
as are born on the same not Aliens  
1. 5. 13

Princes may have an exclusive  
property in the same 1. 5. 2  
Subject to protection, and to be divi-  
ded amongst men 1. 5. 4. 5

Sea inseparably appendant to the  
Kingdom of England 1. 5. 13

Not without protection 1. 5. 6

The British Sea the Dominion vin-  
dicated by King Edgar and o-  
thers 1. 5. 7

British Sea is the 4. Seas 1. 5. 18

Kings of England have istum Re-  
gimen exclusive of the Kings of  
France 1. 5. 11

The importance of the same to the  
Crown of England 1. 5. 14

The British Sea ever belonged to the  
Empire of this Isle. 1. 15. 2

The Extent thereof, and the King of  
England's Right on the same,  
how far agreed by the Dutch  
Treaty 1. 15. 3

## Servitude or Slavery.

Brought in by the Lawes of Na-

tion

Those that continue in that state can  
have nothing of their own. 3. 1. 2

Children are Slaves, and the Rea-  
sons that first introduced that Do-  
minion 3. 1. 4

Refuge was granted by the Jewes  
to such 3. 1. 5

Slavery become obsolete in Christen-  
dome 3. 1. 6

Servitude in some respects may  
stand at this day 3. 1. 7

A Slave might be imprisoned at the  
will of his Lord 3. 1. 9

## Sheriff.

May sell bona peritura of Ship-  
wrack & Goods 2. 5. 8

## Ships.

In necessity may take Goods from  
another by force of Arms 1. 4. 18

Ships gain'd by an Enemy in Bat-  
tail and regain'd, where the  
property is lost 1. 1. 7

Ships of Warr retaking a Prize  
from an Enemy, restitution of the  
same where made ibid.

Fire-Ships not subject to Quarter  
1. 14. 12

Ships where subject to an Embargo  
by the Lawes of Enemies. 1. 1. 11

Ships of Friends freighted with the  
Goods of Enemies. 1. 1. 12

Ships taken by Letters of Marque  
ought to be carried infra presi-  
dia of that Prince, or State by  
whose Subject the same were ta-  
ken,

# The Table.

ken  
 Ships taken by a lawful Commission,  
 but the property not being chan-  
 ged, by the Lawes of Nations the  
 persons may be questioned Civiliter,  
 but not Criminaliter,  
 I. 1. 4.  
 Ships may be Pressed for Publique  
 Service I. 6. 1, 4  
 Though the Vessels of another Prince  
 in Amity, be they private or  
 publique I. 6. 2, 4  
 Ships Pressed ought not to be im-  
 ployed but on publique occasions,  
 I. 6. 3  
 The punishment of those that shall  
 break the Arrest I. 6. 4  
 Newly built ought to make one Voy-  
 age before the Owners can part,  
 2. 1. 3  
 King of England's Ships are not  
 to strike to any Ship whatsoever  
 generally, and when out of Cour-  
 tesie they may I. 15. 6  
 Are to Salute Castles and Ports of  
 Strangers, and how the same is  
 regulated I. 15. 7  
 The Commanders of them are not to  
 Salute their Admiral or Com-  
 mander in Chief after they have  
 done it once I. 15. 9  
 Second Rate Ships when they are  
 to Salute Noble-men coming a-  
 board I. 15. 9  
 Their Duties in Salutations,  
 I. 15. 9, 10, 11  
 Ship taken in pieces and rebuilt is  
 another Ship; but if ript up only  
 to the Keel, otherwise. 2. 1. 6  
 Ship repaired with another mans

Lib.Ch.s.

I. 2. 19

Lib. Ch.

Plank, who are the Owners,  
 2. 1. 7  
 By the Sale of the Ship with all  
 her Apparel and Instruments  
 thereto belonging, the Ship Boats  
 passes not 2. 1. 8  
 May be Mortgaged in time of ne-  
 cessity 2. 2. 14  
 The various way of Freightning  
 them 2. 4. 1  
 Perishes, the Freight vanishes,  
 2. 4. 13  
 Ships Encountering each other, how  
 the damage is to be settled,  
 2. 9. 7  
 Not having two Decks and 16  
 Guns, are to pay one per-  
 Cent. over and above the Book of Rates  
 2. 13. 3  
 Burning any of his Majesties Ships,  
 the party to be punished with  
 death I. 14.  
 The Kings Ships and their Pro-  
 visions not to be imbezelled, nor  
 they by negligence or wilfulness  
 destroyed I. 14. 24  
 The French Ships are to pay 10 s.  
 for every Passenger that shall passe  
 in or out of this Kingdome 2. 13. 1

## Societies.

They make but one Body, and are to  
 make but one single Entry of their  
 Goods 2. 13. 13  
 Where their debt obliges each Mem-  
 ber, and where not I. 2. 2, 3  
 A Bill accepted by one binds not the  
 rest, though it may the party ac-  
 ceptor. 2. 10. 19  
 Superisurs

## The Table.

Lib. Chap. 5.

*Superiours not responsible to Inferiours by the Lawes of Nations,*

1. 4. 18

### Spies.

*Lawful by the Lawes of Nations, how used if catch't.*

1. 14. 21

1. 13. 6

*Ships in that Service not obliged to Fight*

1. 13. 7

### Spoyl.

*Goods may be as well spoyled as taken*

1. 1. 15

*Spoliatico, the difference between that and Legalis Captio*

1. 1. 9

*The Spoyle or Prize is to be equally divided as well to those Ships that are present, as those that attacke and enter*

1. 2. 10

### States.

*May execute the Judgments of each other*

3. ult. 8

*But not in cases of Life or Honour,*

3. ult. 9

### Subjects.

*Share in the Indignity offered to their Prince*

1. 15. 16

### Subsidy.

*On what it issues out*

2. 12. 8

*How the same is governed upon Woollen Cloaths*

2. 12. 11

### Tare.

**W***hen to be allowed, and for what*

2. 13. 14

Lib. Chap. 5.

### Treasons.

*It is lawful to make use of a Traytor, but not to make one.*

1. 14. 20

*Treason in an Alien is to be tryed by the course of the Common-Law, and not per medietatem,*

3. 4. 5

*Treason out of the Realm may be tryed within the Realm.*

3. 4. 7

### Treason.

*Is subject to be punished every where*

1. 11. 2

*They are to be delivered up.*

1. 11. 4

*If Treason in killing an Ambassadour.*

### Treaties.

*Of Truce for years settles a Peace, and preserves the Honour of each party*

1. 9. 3

*Less subject to a Rapture then a Peace*

1. 9. 4

*Breaches of Truces how punishable,*

1. 9. 5

### Tribute.

*It is lawful to pay Tribute to Caesar, what is meant by the same,*

1. 12. 2

Vide Customes.

### Triumphs.

*Their Antiquity, Use and Advantage*

1. 14. 29

### Trust.

## The Table.

Lib. Ch. 5.

### Trust.

*A Stock in a Company is a Trust,  
and is governed accordingly,*  
2. 11. 6

### Tryals.

*Tryal of Warr must be by the Re-  
cords of Courts, and not Juries,*  
1. 1. 6

*Tryals per medietatem their An-  
tiquity* 3. 4. 1

*It matters not of what Tongue, so  
the moyety are Aliens.* 3. 4. 3

*If both parties are Aliens, then all  
are to be Natural born Subjects,*  
ibid.

*May pray Venire facias as well af-  
ter the awarding the Venire as  
before* 3. 4. 4

### Vacancy.

**G**ives a Right to plant. 3. 5. 2  
*Civil vacancy what is meant  
by the same* 3. 5. 3

### Victuals.

*Failing a Shipboard, what every  
one hath a Shipboard may be  
brought forth* 1. 1. 4

### Voyage.

*Voyage when the same begins,*  
2. 7. 10

Lib. Chap. 5.

*Trading Voyage but one Voyage,*  
2. 4. 6

### Usury.

*Advancing Money on a Contingency  
not within the Statute* 2. 11. 13  
14

### Usura Maritima.

*What is meant by the same,*  
2. 11. 14

### Want.

*That or Plenty is the measure of  
things* 2. 11. 4

### Warr.

*When by the Lawes of England,*  
1. 1. 6

*Warr, the just causes of the same,*  
1. 1. 5

*Injury or spoyl committed to persons  
or goods in time of Warr, cannot  
create a cause for Reprizal,*  
1. 2. 15

*An innocent person may be deserted  
and delivered up to death to pre-  
vent a Warr* 1. 11. 6

*If bound to deliver up himself,*  
ibid.

*Who are exempted from the Sword  
in time of Warr.* 1. 14. 18

*In Warr Contribution may be paid  
to both parties* 1. 12. 3

*Warr introduces the greatest of  
Evils* 1. 15. 17

*The Conditions that are requisite  
before*



## The Table.

Lib. Chap. 5.

before the same be commenc'd,  
 ibid.  
 Uncertain danger no cause for the  
 same 1. 15. 11

### Wharves.

Which are lawful in London,  
 2. 14. 10  
 Wharfingers obliged to make Sa-  
 tisfaction for Goods damnified or  
 lost 2. 9. 4

### Witness.

Of all sorts are to pay Aliens Du-  
 ties 2. 13. 6

### Words.

Lost or not lost, how those words are  
 to be construed 2. 7. 5  
 King and King, King and State,  
 State and State, how to be un-  
 derstood 8. 7. 17, 18

Lib. Chap. 6.

At and from the Port of London  
 how construed 2. 7. 10  
 Words that amount to an accep-  
 tance of a Bill of Exchange;  
 2. 10. 20

### Wreck.

In matters of Wreck there is a Con-  
 tract between the party lost,  
 and they that find the Goods,  
 2. 5. 1  
 Punishment of those that steal the  
 Goods of Shipwrack persons by  
 the Civil Law 2. 5. 2  
 If any thing escapes alive, no Wreck  
 by the Lawes of England;  
 ibid.  
 The Kings of England bath the  
 same by their Prerogative. 2. 5. 5  
 Wreckt Goods pay no Customs,  
 2. 5. 9  
 Wreck of the Isle of Wight passe  
 not without expresse words,  
 2. 5. 10

## The End of the TABLE.



**S**OME Slips having happen'd in the Printing this Book in  
 the Author's abience; He desires the Reader to amend  
 the same, and to allow him his favourable construction.